



# City of Wilmington

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## **Public Works & Transportation Committee**

Va'Shun "Vash" Turner, Chair  
Ciro Adams, Vice Chair  
Ernest "Trippi" Congo, II  
Michelle Harlee  
Zanthia Oliver  
Loretta Walsh  
Dr. Hanifa Shabazz, Ex-Officio Member

# **NOTICE**

## **Public Works & Transportation Committee Meeting**

**NOVEMBER 19, 2018**

**5:00 p.m.**

**1<sup>st</sup> Floor Council Committee Room**

## **Agenda**

- An Ordinance to (I) Approve the Removal of a Portion of Garasches Lane from the Official City Map and (II) Accept the Dedication of an Unnamed City Street between South Walnut Street and Garasches Lane and Add it to the Official City Map
- Discuss a Resolution Declaring a Portion of Garasches Lane to be Surplus and Approving the Property for Disposition to the Riverfront Development Corporation
- **Substitute No. 1 to Ord. 18-039** Amend Chapter 42 of the City Code Relating to the Installation of Wireless Telecommunications Facilities in the Public Rights of Way
- Presentation by Sun Edge LLC regarding Solar Technology

(11.12.18)

*Any members of the public who wish to speak during the committee meeting will be limited to three minutes per agenda item. If the public's permission to comment is abused, the Chair may exercise greater discretion in limiting public comment.*

**AN ORDINANCE TO (I) APPROVE THE REMOVAL OF A PORTION OF GARASCHESS LANE FROM THE OFFICIAL CITY MAP AND (II) ACCEPT THE DEDICATION OF AN UNNAMED CITY STREET BETWEEN SOUTH WALNUT STREET AND GARASCHESS LANE AND ADD IT TO THE OFFICIAL CITY MAP**

**WHEREAS**, the City of Wilmington is authorized to establish and revise plans of streets and alleys by the provisions of Sections 1-101, 2-306, and 5-400 of the City Charter, such actions to be done in accordance with applicable provisions of State law and Section 42-11 of the City Code; and

**WHEREAS**, Riverfront Development Corporation (the "Applicant") has requested that (i) a portion of Garasches Lane be removed from the Official City Map, as illustrated on Exhibit "A" attached hereto and made a part hereof and (ii) a new public right-of-way connecting Garasches Lane with South Walnut and South Market Streets at a new signalized intersection located just north of where South Walnut and South Market Streets divide be dedicated and that the street be added to the Official City Map, as illustrated on Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, the City of Wilmington currently holds title to two separate sections of the street bed beneath the portion of the Garasches Lane right-of-way proposed to be removed and after extensive research the Department of Public Works has concluded that ownership of the remaining areas of the Garasches Lane street bed cannot be determined; and

**WHEREAS**, the proposed street removal will not negatively affect any existing utility easements, and all rights of access by the City will remain unchanged; and

**WHEREAS**, there are no findings to suggest that the removal of the portion of Garasches Lane would create a detriment to the surrounding properties, the general public, or public safety; and

#4596

Sponsor:

Council  
Member  
Harlee

**WHEREAS**, the new city street would be located on two existing parcels (Tax parcel #2605700053 and #2605700052) connecting Garasches Lane with South Walnut and South Market Streets at a new signalized intersection located just north of where South Walnut and South Market Streets divide and once the new street is built to all City standards and all requirements of the Department of Public Works, it will be conveyed to the City; and

**WHEREAS**, the City Planning Commission has adopted Planning Commission Resolution 21-18, which recommended approval of the Applicant's request to remove the proposed portion of Garasches Lane from the Official City Map and dedicate a new public right-of-way connecting Garasches Lane with South Walnut and South Market Streets at a new signalized intersection located just north of where South Walnut and South Market Streets divide be dedicated and that the street be added to the Official City Map; and

**WHEREAS**, the City Council deems it necessary and appropriate to approve: (i) a portion of Garasches Lane be removed from the Official City Map, as illustrated on Exhibit "A" attached hereto and made a part hereof and (ii) a new public right-of-way connecting Garasches Lane with South Walnut and South Market Streets at a new signalized intersection located just north of where South Walnut and South Market Streets divide be dedicated and that the street be added to the Official City Map, as illustrated on Exhibit "A" attached hereto;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** The removal from the Official City Map of the portion of Garasches Lane, which is illustrated as the beige color coded section on Exhibit "A" attached hereto, is hereby approved, and the Official City Map is hereby amended to reflect such removal.

**SECTION 2.** The dedication of the new public right-of-way, which is illustrated as the green color coded section on Exhibit "A" attached hereto, is hereby approved, and the Official City Map is hereby amended to reflect such addition.

**SECTION 3.** All City departments are hereby authorized to take any and all necessary actions required for the (i) proposed removal of said portion of Garasches Lane from the Official City Map and (ii) proposed dedication of the new public right-of-way and its addition to the Official City Map.

**SECTION 4.** This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading ..... November 15, 2018  
Second Reading ..... November 15, 2018  
Third Reading .....

Passed by City Council,

\_\_\_\_\_  
President of City Council

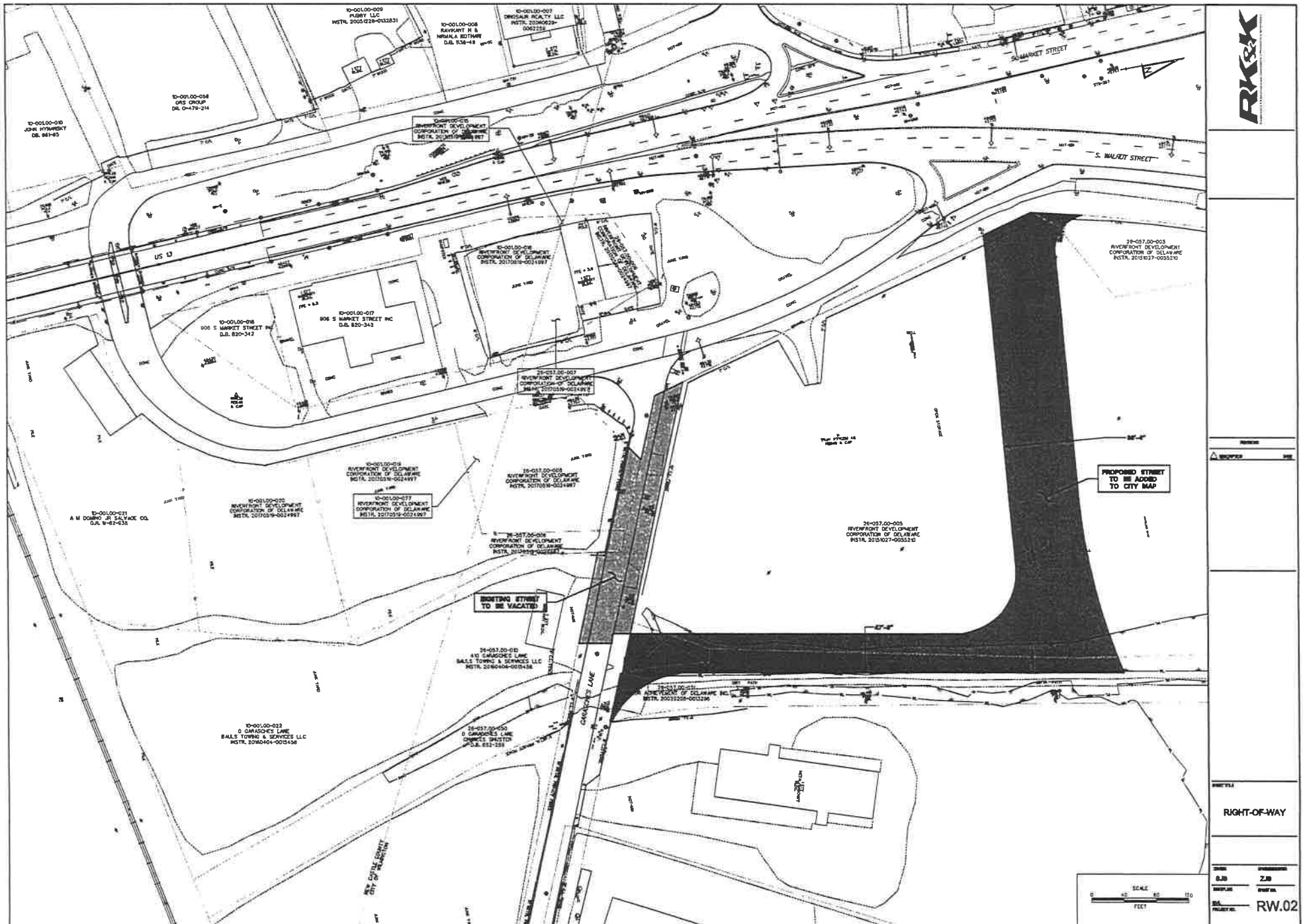
ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance authorizes the removal of a portion of Garasches Lane from the Official City Map. This Ordinance also accepts the dedication of an unnamed City street between South Walnut Street and Garasches Lane and adds it to the Official City Map.

**FISCAL IMPACT:** This Ordinance has no significant anticipated fiscal impact.



Wilmington, Delaware  
December 6, 2018

**WHEREAS**, pursuant to 1 Wilm. C. (Charter) § 1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose;  
# and

**Sponsor:**

**WHEREAS**, Wilm. C. § 2-621(a) authorizes the Department of Real Estate and Housing to conduct disposition proceedings of real property owned by the City; and

**Council  
Member  
Harlee**

**WHEREAS**, Wilm. C. § 2-621(c) provides that governmental agencies, governmental authorities organized pursuant to Title 22 of the Delaware Code, and non-profit organizations are exempt from the City's bid procedures and that upon the declaration of a property as approved for disposition by resolution of City Council, the Department of Real Estate and Housing may negotiate an agreement of sale, lease, exchange, or other transfer of such property owned by the City to any such governmental agency, governmental authority, or non-profit organization; and

**WHEREAS**, the City currently owns portions of Garasches Lane to be disposed (the "Property"), the property includes approximately 0.2856 acres made up of the property described in Deeds 0-116-55 and 0-116-59 and being part the beige color coded section on Exhibit "A" attached hereto; and

**WHEREAS**, the Property is a portion of a street being vacated as part of a roadway connection to be constructed by DELDOT as part of the Christina River Bridge and Garasches Lane road development project (CRB protect T200512103); and

**WHEREAS**, the Riverfront Development Corporation is the owner of the property adjacent to the Property and has requested that the City transfer the Property to it;

**WHEREAS**, the Council, upon the recommendation of the Department of Real Estate and Housing, wishes to declare the Property surplus; and

**WHEREAS**, the Council further wishes to approve the disposition of the Property to the Riverfront Development Corporation.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that Council hereby declares the Property to be surplus and approves the Property for disposition to the Riverfront Development Corporation.

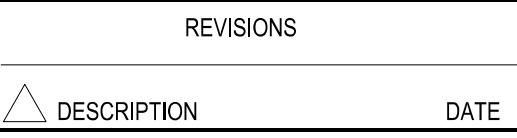
**BE IT FURTHER RESOLVED** that Council hereby authorizes the Mayor or his designee to execute any and all documents necessary to effectuate disposition proceedings for the Property, including any and all further undertakings and assurances that may be appropriate.

Passed by City Council,

Attest: \_\_\_\_\_  
City Clerk

**SYNOPSIS:** This Resolution declares a portion of Garasches Lane to be surplus and approves the property for disposition to the Riverfront Development Corporation





SHEET TITLE

RIGHT-OF-WAY

DRAWN	CHKD/DESIGNER
SJS	ZJS
DISCIPLINE	SHEET NO.
CIVIL	RW.02
PROJECT NO.	



**SUBSTITUTE NO. 1 TO ORDINANCE NO. 18-039**

**AN ORDINANCE TO AMEND CHAPTER 42 OF THE CITY CODE RELATING TO  
THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES IN  
THE PUBLIC RIGHTS OF WAY**

**WHEREAS**, providers of wireless telecommunications have expressed a desire to install small cell facilities in the public rights of way in order to expand the capacity of wireless networks in the city; and

**WHEREAS**, city council finds that enabling wireless telecommunications providers to provide high quality wireless communications service infrastructure to serve current and future needs of the city, its residents, visitors and businesses is beneficial to the city; and

**WHEREAS**, city council desires to balance the needs of wireless telecommunications providers with its duties to protect the public health, safety, and welfare of its residents; to avoid adverse visual and aesthetic impacts; and to manage the public rights of way, a physically limited resource; and

**WHEREAS**, city council finds it appropriate to clarify its policy with respect to agreements for use of city-owned or controlled structures within the public rights of way; and

**WHEREAS**, city council deems it necessary and appropriate to establish a fair and efficient process for the review and approval of requests to install wireless telecommunications facilities in the public rights of way that protects the health, safety, welfare and aesthetic concerns of the public, complies with all applicable laws, and permits the city to recover the costs associated with the review of such requests.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** Chapter 42 of the City Code is hereby amended by amending Article XIII entitled Right-of-Way Management for Utility Service by renumbering subsections (b)-(v) of section 42-704 as subsections (c)-(w), respectively, and by deleting the stricken language and adding the underlined language to read as follows:

**Sec. 42-704. – Rules of construction; definitions.**

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- (b) Antenna means any transmitting or receiving device mounted on or within a tower or support structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, microwave, radio frequencies or other frequency energy waves, radar signals, telecommunications signals or other communications signals. As used in this Chapter only, “antenna” shall refer solely to antennas located within the public rights of way.

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- ~~(w)~~(x) Public rights-of-way means the surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public easement, right-of-way or any other public ground or water within or in which the city now or hereafter holds any property interest or otherwise controls or manages, and which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating, and maintaining a communications facility. No reference herein, or in any license agreement, to a public right-of-way shall be deemed to be a representation or warranty by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a licensee shall be deemed to acquire only those rights of use as the city may have the undisputed right and power to give.

- (y) Support Structure means any structure which can be used for the location of antennas.

- (z) Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, television, internet and similar wireless telecommunications purposes, including self-supporting lattice towers or monopole towers. The term includes the structure and its foundation, radio and television transmission towers, microwave towers, cellular telephone towers, common-carrier towers, alternative tower structures and the like.

- (x)(aa) *Transfer*. The transfer of an interest in a franchise or license means the sale or transfer, directly or indirectly, of an existing or newly created equity interest in the franchisee or licensee whether or not it may result in a transfer of control of the franchisee or licensee.
- (bb) *Underground areas* are those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.
- (y)(cc) *Underground facilities coordination manual* is the manual, as it may be amended from time to time, in which those regulations promulgated by the commissioner necessary to carry out the purposes of this article shall be consolidated.
- (z)(dd) *Utility or public utility* shall have the meaning set forth in Title 26, § 102(3) of the Delaware Code, as amended, provided that for purposes of this article utility also includes operators of cable television systems, open video systems, wireless ~~telecommunications~~ infrastructure and wireless service providers as well as every individual, partnership, association, corporation, joint stock company, agency or department of the State of Delaware or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within the State of Delaware, any natural gas, electric, water, wastewater, telecommunications service, system, plant or equipment.
- (aa)(ee) *Wireless* means transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, microwave, or via radio frequencies.
- (ff) *Wireless Telecommunications Facilities Manual* is the manual, as it may be amended from time to time, in which those regulations pertaining to the placement of wireless telecommunications facilities in the public rights-of-way shall be consolidated.
- (bb)(gg) ~~*Wireless telecommunications facility* is the capital, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, pedestals, and electronic equipment within the right of way used for the purpose of transmitting, receiving, distributing, providing, or offering wireless telecommunications.~~ means wireless service infrastructure at a fixed location, whether for cell phone usage or other data transmission, consisting of the antennas, support structure, and related equipment, including but not limited to storage buildings, sheds or equipment cabinets.

~~(ee)(hh)~~ Wireless telecommunications infrastructure provider is every person that owns, controls, operates or manages a wireless telecommunication facility or portion thereof within the city public right-of-way for the purpose of offering wireless telecommunication services (i.e.; transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data).

(ii) Wireless service provider is every person who provides wireless services to end users.

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**Sec. 42-706. – Authorization required; permit required.**

(a) *Other authorizations required.*

(1) No person shall install, erect, hang, lay, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right-of-way in this city without first obtaining any required authorization from the city which may include a franchise, license, lease or any other form of authorization required under federal, state or local law.

(2) A person must obtain the required authorization, for any portion of a system that occupies a portion of the public rights of way and for the provision of utility or video programming service, over a system located, in whole or in part, within the public right-of-way. No person may occupy the public rights of way in the city to provide video programming services, utility services, or infrastructure used in the provision of utility services without a written authorization of that occupancy issued by the city, or an authorization of occupancy of the rights of way lawfully issued by the State of Delaware that permits occupancy of the portion of the public rights of way where a facility will be placed without further authorization from the city. Without limitation, a person occupies the public rights of way if it owns, controls, operates or manages facilities in the public rights of way. Provided, subject to such conditions as the city may establish, an authorization may specifically permit a wireless infrastructure provider to allow another wireless service provider to own part of the wireless telecommunications facility without obtaining a separate authorization to occupy the public rights of way.

(3) An authorization from the city under Sec. 42-706(a)(2) may take the form of a franchise, license or other written consent issued by the city. A construction permit, excavation permit, building permit, encroachment permit, road cut permit, site plan approval, permit for construction of a wireless telecommunications facility, or similar type permits are not authorizations to occupy the public rights of way. The authorization to occupy the public rights of way shall specify the compensation to be paid to the city for occupancy of

the public rights of way, which compensation shall take into account the use of the public rights of way authorized. The person seeking the authorization shall additionally reimburse the city for the costs the city incurs in connection with its review of, and action upon the person's request for the authorization.

(4) An authorization only authorizes occupancy in the manner and for purposes specified in the authorization.

(5) In addition to obtaining required authorizations, each person who will own or control wireless telecommunications facilities in the public rights of way that are used in the provision of utility services for a fee shall register with the city, and provide and maintain an accurate list of its wireless facilities, their location, and size.

(6) For purposes of this section, utility services include, but are not limited to, information services, telecommunications services, and personal and private wireless services.

(b) *Construction permits required.*

(1) Except as provided in subsection (b)(3), no person shall install, erect, hang, lay, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right-of-way in this city without first obtaining a construction permit therefor from the city.

(2) Except as provided in subsection (b)(3), no person shall enter upon, across, beneath, or over any public right-of-way in this city to relocate or otherwise displace any facility that is located upon, across, beneath, or over any public right-of-way without first obtaining a construction permits therefor from the city, except to the extent otherwise permitted by applicable law.

(3) The following work may be conducted without obtaining a construction permit:

- a. Work activity that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work activity does not change the visual or audible characteristics of a wireless telecommunications facility. The Wireless Telecommunications Facilities Manual may also exempt wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a construction permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the facilities, and the work associated with them, such a permit is not required to protect the public health, welfare or safety, to maintain the



character of a neighborhood or corridor, or to serve the purposes of this ordinance.

b. Work activity where facilities are relocated or where certain maintenance and/or modifications must be accomplished in coordination with a street construction or maintenance project by the city or DelDOT; however, the permit application system shall be used to notify the city of the work activity.

c. Routine operation or maintenance activities involving underground facilities but that do not include the excavation of paved street surfaces or disrupt or impede traffic in the traveled portion of a street. Examples of this work include, but are not limited to, work in underground manholes, regulators, valves, splice vaults, regulator pits, leak survey, leak investigation and classification, pumping pits or vaults.

d. Installation of "cells on wheels" or similar facilities for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities. This section does not relieve a person from the obligation to obtain other required permits (such as electrical permits) or to file appropriate traffic control plans.

e. Installation of a wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand is comparable to other facilities commonly installed on strand; does not touch or interfere with other facilities; does not cause excessive strand sag; and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles. The Wireless Telecommunications Facilities Manual may specify the volumetric limits that will fit within this exception.

(c) Any person, meeting the criteria of subsection (b)(3) above and therefore, not required to obtain a construction utility permit, must comply with all other relevant provisions of this article and the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual.

(d) Any person performing excavation on DelDOT maintained roads in the city limits is subject to state permit requirements. City of Wilmington construction permits are also required in these circumstances, however, the city permit fees for city permits issued solely for excavation in the public rights of way are waived.

(e) Wireless Telecommunications Facilities.

(1) Wireless telecommunications facilities requiring a permit under this Article shall meet the minimum requirements set forth in this ordinance and the Wireless Telecommunications Facilities Manual, in addition to the requirements of any other applicable law.

(2) The regulations in the Wireless Telecommunications Facilities Manual and decisions on applications for placement of wireless telecommunications facilities in the public rights of way shall, at a minimum, ensure that the requirements of this section are satisfied, absent a showing that denial of an application would effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations such that the city is required to approve the application. If an applicant establishes that the city is required to approve the application, the requirements of this ordinance and the Wireless Telecommunications Facilities Manual may be waived, but only to the minimum extent required to avoid the violation.

(3) The placement of wireless telecommunications facilities shall be subject to such other rights as the city possesses with respect to the public rights of way, and shall be installed, where approved, in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights of way and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the public rights of way; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not incommode the public, interfere with the primary uses of the public rights of way, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation or abandonment of facilities in the public rights of way.

(4) Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive or is required to avoid an effective prohibition:

(a) Antennas located at the top of public right of way support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;

(b) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.

(c) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, placed to avoid interfering or creating any hazard to any other use of the public rights of way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.

(d) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.

(e) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.

(5) The city, as a matter of policy, will negotiate agreements for use of city owned or controlled light standards and traffic signals in the public rights of way. The placement of wireless telecommunications facilities on those structures shall be subject to the agreement, and the provisions of subsections (2), (4), (7), and (8) herein and the provisions of section 42-709(b) through (k) are not required to apply to such agreements by this ordinance. However, it is the intent of the City that absent specific findings that approval is required or in the public interest, the approval for use will only occur if placement is consistent with this ordinance, if the visible elements of the wireless telecommunications facility are no larger than provided in the Wireless Telecommunications Facilities Manual, and if the design is consistent with the design of the facility to which it is to be attached, minimizes the overall impact on the structure and its surroundings, and does not in any respect interfere with current and future uses of the structure by, or as directed by, the City. The agreement shall specify the compensation to the city for use of the structures. The person seeking the agreement shall additionally reimburse the city for all costs the city incurs in connection with its review of, and action upon, the person's request for an agreement.

(6) No permit and no agreement for use of city owned or controlled light standards and traffic signals, shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with Federal Communication Commission ("FCC") regulations governing radio frequency ("RF") emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit or lease.

(7) No new support structures for wireless facilities shall be permitted in the public rights of way, and no wireless telecommunications facilities shall be permitted above-ground in areas where, under section 42-713(b), new aerial plant may not be constructed; provided that the city may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility.

(8) No permit shall issue except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility, or wireless infrastructure providers that have contracts with wireless service providers requiring the service provider to use the proposed wireless telecommunications facility within one year of the granting of the permit.

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#### **Sec. 42-708. – Administration.**

(a) The commissioner or his or her designee shall:

(1) Issue all construction permits and inspect the work under each;

(2) Determine and collect all fees owed under this article;

(3) Publish from time to time a schedule of application and hearing fees, which shall be designed to recover the city's costs in processing applications for permits hereunder and may provide specially for hearing fees in those cases where hearings are required; and

(4) From time to time amend the provisions of the underground facilities coordination manual, which ~~shall~~ may include but not necessarily be limited to provisions concerning:

a. Design requirements;

b. Permit procedure and requirements;

c. Forms of permits and other documents;

d. Insurance and other requirements for the protection of the city;  
and

e. Permit-related fees;

f. Such conditions as are necessary to protect the public health, safety and welfare, and to ensure the completion, safety, workmanship and restoration of the work and/or work area so permitted;

g. Govern requirements regarding relocation at the expense of the permittee in the event that the privately owned facility is found to conflict with future public facilities or with access to repair, replace, or maintain existing or future public facilities;

h. Ensure permittees have obtained and are maintaining all required consents, licenses, or franchises from the city with respect to the facilities that are the subject of the permit; and

i. Otherwise further the city's efforts to realize the objectives described in this Article.

(5) From time to time amend the provisions of the Wireless Telecommunications Facilities Manual, which may include but not necessarily be limited to provisions concerning:

a. Design requirements;

b. Permit procedures and requirements;

c. Forms of permits and other documents;

d. Insurance and other requirements for the protection of the city;

e. Permit-related fees;

f. Such conditions as are necessary to protect the public health, safety and welfare, and to ensure the completion, safety, workmanship and restoration of the work and/or work area so permitted;

g. Govern requirements regarding relocation at the expense of the permittee in the event that the privately owned facility is found to conflict with future public facilities or with access to repair, replace, or maintain existing or future public facilities;

h. Ensure permittees have obtained and are maintaining all required consents, licenses, or franchises from the city with respect to the facilities that are the subject of the permit; and

i. Otherwise further the city's efforts to realize the objectives described in this Article.



(6) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.

(7) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including entering into agreements to mutually extend the time for action on an application.

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#### **Sec. 42-709. – Permit procedures.**

(a) An application for a permit shall be submitted in the format and manner specified by the department in Appendix B of the Underground Facilities Coordination Manual or the relevant section of the Wireless Telecommunications Facilities Manual, as applicable.

(b) For wireless telecommunications facilities, as part of the application, the applicant shall submit an initial fee and must agree to pay the costs incurred by the city in reviewing the application. Fees shall be set forth in the Wireless Telecommunications Facilities Manual. Fees set forth in the Wireless Telecommunications Facilities Manual:

(1) shall be designed to recover the costs the city expects to incur in reviewing applications for wireless telecommunications facilities, including costs associated with outside consultants; and

(2) shall be reviewed periodically and, may be increased or decreased based upon the costs the city expects to incur as a result of such review. The first review shall commence on or after the first anniversary of the effective date of this ordinance.

(c) For wireless telecommunications facilities, the applicant and the persons on whose behalf the work is being performed, or who will own or control any portion of the facilities that will be installed pursuant to the permit, shall be jointly responsible for submitting all necessary information to the city and for ensuring the accuracy of any information submitted.

~~(b)~~(c) Requests for waivers from any requirement of this section shall be made in writing to the commissioner or his or her designee. The commissioner may grant a request for waiver if the utility (or a contractor working for the utility) demonstrates to the commissioner that, notwithstanding the issuance of a waiver, the department will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

~~(e)~~(d) If the activity for which the permit is sought will include or require the cutting or any other manner of construction or obstruction on a city sidewalk, the applicant

must file a copy of the permit application form in the offices of the Department of Licenses & Inspections in the Louis L. Redding City/County Building, 3rd Floor, 800 N. French St., Wilmington, Delaware 19801. Applications for placement of a wireless telecommunications facility in the public rights of way must be filed with the Department of Public Works in the Louis L. Redding City/County Building, 6<sup>th</sup> Floor, Wilmington, DE 19801.

~~(d)~~(e) Permit application forms that are not complete or do not include required fees may be rejected. No deadline applicable to the department associated with the filing of a complete permit application form shall begin to run until such time as a complete application form has been filed by applicant. Provided that, for personal wireless facilities, as that term is defined under federal law, and eligible facilities requests, as that term is defined under federal law, applications will be processed, and notices of incompleteness provided, in conformity with state, local and federal law.

~~(e)~~(f) If the submittal of plans or other documents is required, the plans and/or documents shall be legible and of a scale that accurately and clearly presents the detail of the proposed work. Plans or documents not meeting these requirements may be rejected.

~~(f)~~(g) If the submittal of plans, requests or other documents is required, a utility may substitute electronic data transfer under the procedures set forth in the Underground Facilities Coordination Manual or the Wireless Telecommunications Facilities Manual, as applicable.

~~(g)~~(h) The commissioner or his or her designee may approve, conditionally approve, or deny an application for a permit.

~~(h)~~(i) If an application is approved, ~~the commissioner shall issue~~ a permit shall be issued to the applicant, subject to appeal as provided herein.

~~(i)~~(j) If an application is conditionally approved, the commissioner or his or her designee may condition the permit with specified requirements that preserve and maintain the public health, safety, welfare, and convenience, and ensure compliance with provisions of this Code and applicable law.

~~(j)~~(k) If an application is denied, the commissioner or his or her designee shall advise the applicant by a written, electronic, or facsimile communication of the basis for the denial.

(l) No action may be taken pursuant to an approved permit unless and until all delinquent amounts owed by the applicant to the city are fully paid.

(m) Any applicant adversely affected by an action of the commissioner's designee with respect to a wireless telecommunications facility may appeal the action to the commissioner by filing a notice of appeal with the department, and identifying the actions that are being appealed. The appeal must be received within seven (7)

business days of the date the applicant is notified of the written decision, which notification may be electronic or by mail. The commissioner may decide the appeal based on the information submitted to the department, or receive additional information and conduct such public hearings as appropriate. In determining the procedures to be followed in a particular case the commissioner shall take into account any applicable law governing the timing for a final decision. The commissioner may enter into agreements or grant requests for extensions of time (including the time for filing an appeal), provided the extensions do not prevent timely final action on an application under applicable law. No decision on appeal shall be final until a written decision issues.

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#### **Sec. 42-713. – Construction.**

- (a) *Placement of facilities.* All facilities placed by an owner in public streets within the city shall be so located as to minimize interference with the proper use of public streets and other public ways and places, and to minimize interference with the rights or reasonable convenience of property owners who adjoin any of these public streets or other pre-existing utilities in the right-of-way.
- (b) *Location.* Except as permitted under section 42-706(e)(7), ~~No~~ holder of any construction permit for any facility shall erect new aerial plant in or on a public right-of-way in which one or more public utility providers has placed its lines underground or in an area where the city by ordinance has forbidden new aerial plant to be constructed or existing aerial plant to be maintained.
- (c) *Construction and location details.* The city reserves the right to review the detailed location and design of all utility installations, adjustments, or relocations in the street right-of-way for compliance with these procedures and issue permits for proposed utility work pursuant to the provisions of this article.
- (d) All utilities and contractors working in the City of Wilmington shall comply with all applicable requirements of 26 Del. C. ch. 8, also known as the Underground Utility Damage Prevention and Safety Act.
- (e) Each holder of any construction permit for any facility shall, upon written notice from the city, reasonably in advance, promptly relocate its lines at its own expense to accommodate realignment or construction of public streets, sidewalks, curbs, drains, sewers, and public improvements of any sort.
- (f) *Obstructions in public streets.*
  - (1) A person who places or maintains an obstruction in, on, over, under or through a city public street shall promptly shift, adjust, accommodate, or remove the obstruction on reasonable notice from the city.

(2) If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the commissioner may charge the person having or maintaining the obstruction for the cost of performing the work.

(g) *Restoration.*

(1) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or any public or private property, the owner or permit holder shall, in a manner acceptable to the city, replace, repair, and restore all paving, sidewalk, driveway or surface of any public street or alley disturbed, or public or private property to as good condition as existed prior to the commencement of such work.

(2) Such restoration shall be at the owner's or permit holder's cost and expense, except to the extent otherwise required by applicable law.

(3) *Warranty of work.* All paving restoration work must be guaranteed and maintained for a period of three years following notice of completion (unless such lesser time period shall be specifically stated in the permit holder's franchise, license or consent from the city authorizing occupancy of the public rights of way agreement with the city). Such warranty shall cease immediately upon disturbance of the work by others including, but not limited to, other utilities, City of Wilmington and/or State of Delaware agencies, including agents and contractors of these entities.

(4) In the event that the owner or permit holder fails to complete any work required for the repair, protection, or restoration of the public rights-of-way, or any other work required by law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done. In such a case, the owner or permit holder shall reimburse the city the cost thereof within 30 days after receipt of an itemized list of such costs, or the city may recover such costs through any bond or other security instrument provided by the owner or permit holder, except to the extent otherwise required by applicable law.

(h) *Notice.*

(1) The permit holder shall not render any road impassable without previous notification to the City of Wilmington Police Department in accordance with the requirements and time frames established in the underground facilities coordination manual and the application.

(2) The permit holder shall notify the department within five business days upon completion or upon cancellation of the permitted work.

(3) Failure to provide such notice shall be grounds for suspension of the work until such notice is provided. The utility or contractor shall sufficiently

address concerns of emergency personnel such that public safety is not compromised.

(i) *Special considerations.*

(1) *New surface considerations.* Utility excavation work that requires disturbance of city street surfaces that have been resurfaced during the past five years shall be limited to emergencies, installation of facilities to serve new customers or increased customer need, work required by regulation, work required in the interest of public safety or environmental protection or work that utilizes construction methods approved by the department of public works that will minimize the damage to the street surface.

(2) *Winter considerations.* It is desirable to minimize excavation of city streets between December 1 and March 1 due to the possibility that proper restoration material availability may be limited. Work that requires disturbance of such surfaces shall be limited to emergencies, installation of facilities to serve new customers or increased customer need, work required by regulation, work in advance of paving or work required in the interest of public safety or environmental protection. If weather conditions prevent the surface repair to be accomplished in accordance with the requirements of the underground facilities coordination manual, a temporary repair shall be made, and periodically maintained, using acceptable cold weather patching material. This temporary repair shall be completely removed when weather conditions permit and "hot mix" material as specified in the underground facilities coordination manual is available for the installation of a permanent surface repair.

(j) Utility installations in the public right-of-way area of city streets are to meet or exceed all of the requirements listed in the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual, as applicable.

(k) *Clearances between utilities.* Vertical and horizontal clearances between utilities must conform to the utility codes set forth in the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual.

(l) *Excavation warnings and barriers.* Any person causing an opening or obstruction in the public rights-of-way shall effectually guard the public against all accidents until the restoration or removal of such opening or obstruction by erecting and maintaining fences or barriers, keeping sufficient lights, lanterns and other warning devices during periods of dusk or darkness and taking any other necessary precautions.

(m) *Exceptions to requirements.*

(1) Any request for deviation from the requirements described in this article due to extreme hardship shall be submitted in writing to the



department. The request should include full justification supporting the claimed hardship condition. The department will promptly review the claim and provide a recommendation that will be forwarded to the commissioner for final action.

(2) The city recognizes and encourages innovative techniques and new technologies in the removal and restoration of street pavements and rights-of-way. To that end, the commissioner may waive or revise certain specific requirements of this policy, when such action would effectively advance a new technology and/or state of knowledge. The burden of testing or otherwise demonstrating that a new technique is likely to be effective rests with the requestor.

(n) *Other related regulations.*

(1) All utilities shall comply with the street safety, marking, and other requirements of the city's "Underground Facilities Coordination Manual" and the "Wireless Telecommunications Facilities Manual."

(2) Underground utilities must consider safe trenching practices when preparing their designs and constructing their facilities. Both utilities and their contractors must comply with all OSHA (Occupational Safety and Health Administration) requirements while working in rights-of-way.

(3) Contractors must insure that work or equipment placed in proximity to overhead high voltage lines complies with the State of Delaware Overhead High-Voltage Line Safety Act.

(4) Communications Act of 1934, as amended, 47 USC 151 et seq.

**SECTION 2.** This Ordinance shall be deemed effective as of August 1, 2018.

First Reading.....June 21, 2018

Second Reading.....June 21, 2018

Third Reading.....

Passed by City Council,

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President of City Council

ATTEST: \_\_\_\_\_

City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance amends Chapter 42 of the City Code by establishing procedures relating to the authorization, permitting and regulation of wireless telecommunications facilities in the public rights of way.

**FISCAL IMPACT STATEMENT:** It is estimated that the cost associated with implementing a review and permit process for the installation of wireless telecommunications facilities in the public rights of way will be approximately \$450,000.00. It is further estimated that the city may recover approximately \$350,000.00 of its costs through the application process. However, the costs and the amount of fees collected through the application process is dependent on the number of applications received.

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# **WIRELESS TELECOMMUNICATIONS FACILITIES MANUAL**

## **1. OVERVIEW OF REGULATIONS**

### **1.1 Basis for Adoption; Definitions.**

This manual is adopted pursuant to Section 42-704 of the Code of Ordinances of the City of Wilmington for the management of wireless telecommunications facilities in the public rights of way. Among other things, the regulations define “safe harbors” including a process through which a wireless service provider or wireless infrastructure provider can obtain pre-approval of designs for particular areas of the City before submitting applications. To minimize the time from application submission to approval, applicants are encouraged to take advantage of this process, and to review designs that have been approved by the City.

Terms defined in Section 42-704 have the same meaning in these regulations, and if not defined there or here, terms are used as they are defined in Section 48-2 of the City Code. In addition:

#### **1.1.1 Applicable laws and standards.**

“Applicable laws and standards” means all applicable engineering and safety laws, regulations and standards governing the installation, maintenance and operation of any facility or structure in the public right of way, and the performance of all work in or around any facility or structure, and includes but is not limited to: the most current versions of the National Electric Safety Code (“NESC”), the Manual on Uniform Traffic Control Devices (“MUTCD”), the National Electrical Code (“NEC”), the regulations of the Federal Communication Commission (“FCC”) and the Occupational Safety and Health Administration (“OSHA”); uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, highway engineering manuals, regulations, design standards and guidance adopted by the DelDOT and Wilmington Transportation Division to ensure the safety of travelers, the provisions of these regulations, City building and zoning codes, and other requirements or guidelines of the City or other Federal, State or County authority applicable to the facility, structure or work to be performed.

#### **1.1.2 Authorization.**

“Authorization” means:

The authorization required by the Section 42-706(a) of the City Code.

#### **1.1.3 Base station.**



“Base station” means:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in the City Code Section 48-2;

The term includes but is not limited to equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul;

The term includes but is not limited to radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks);

The term includes any structure other than a tower, as defined in Section 42-704(z) of the City Code, that, at the time the relevant application is filed under these regulations, supports or houses equipment described in the preceding paragraphs of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. An exemption per Section 1.4.2 from these regulations is not an approval.

#### **1.1.4 Concealment Elements.**

“Concealment elements” means any design feature, including but not limited to painting, landscaping, shielding requirements and restrictions on location or proportions in relation to the surrounding area or supporting structures that are intended to make a wireless telecommunications facility less visible to the casual observer

#### **1.1.5 Eligible Facilities Request.<sup>1</sup>**

“Eligible facilities request” has the same meaning as that term as defined by 47 C.F.R. § 1.40001(b)(3).

#### **1.1.6 Installation.**

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<sup>1</sup>As of the date of adoption, this provision reads: “A request for modification of an existing tower or base station that does not involve a substantial change in the physical dimensions of such tower or base station, involving: collocation of new transmission equipment; removal of transmission equipment, or replacement of transmission equipment.”

“Installation” means and includes installation, maintenance, modification, replacement, and location and relocation.

#### **1.1.7 Occupant.**

“Occupant” means a person who owns or controls, through any arrangement a wireless telecommunications facility or part of a wireless telecommunications facility located in the public rights of way; or a person on whose behalf work is being performed in the public rights of way in connection with a wireless telecommunications facility (whether or not the person occupies the public rights of way at the time of the work).

#### **1.1.8 Permittee.**

“Permittee” means the person who performs work in the public right of way on behalf of an occupant.

#### **1.1.9 Public Right of Way.**

“Public Right of way” has the same meaning as “public rights-of-way” in Section 42-704 of the City Code.

#### **1.1.10 Stealth Facility.**

“Stealth facility” means any wireless telecommunications facility that is integrated as an architectural feature of an existing building to which it will be affixed; or any wireless telecommunications facility that is camouflaged or concealed; so that (1) the presence of the base station and tower (if any) is virtually invisible to the casual observer; or (2) the wireless telecommunications facility is camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is not identifiable by the casual observer as a wireless telecommunications facility. Examples of stealth facilities include wireless telecommunications facilities which are disguised to resemble public art or markers such as: flagpoles, indigenous trees, rocks, signage, street lights, information kiosks, or bus stop shelters. To qualify as “stealth” design, the item in question must match the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function and other attributes as closely as possible, and be placed in a manner and at a location appropriate to the item that it is mimicking. The elements that make a facility a stealth facility are concealment elements.

#### **1.1.11 Substantial Change.**

“Substantial change” has the same meaning as that term as defined by 47 C.F.R. § 1.40001(b)(7).<sup>2</sup>

## 1.2 Protection of Public Rights of Way

These regulations are enacted pursuant to the City Code to recognize the City’s primary role as chief steward of the public rights of way in the City and the City’s duty to its citizens to manage the public rights of way and any incursions into the public rights of way, which are intended for public use for transportation for pedestrians and vehicles.

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<sup>2</sup>As of the date these regulations were adopted, the regulations provided: (7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

These regulations are intended to minimize disruption, visual impact or inconvenience to the public, preserving the public health, safety and welfare; while complying with all applicable laws and standards, and establishing standards that, if satisfied, will permit rapid deployment of wireless telecommunications facilities in the public rights of way.

The regulations describe how the City will receive and process applications to install wireless telecommunications facilities in the public rights of way. The goal of these regulations is to clarify the process for applying and obtaining approval to install, maintain and operate wireless telecommunications facilities in the public rights of way.

### **1.3 Overview of Regulations**

These regulations govern the installation of wireless telecommunications facilities in the public rights of way, including the installation of base stations and support structures that may be required in connection with those facilities. Installation of wireline and electrical lines to the wireless telecommunications facility will be governed by the City's general ordinances and manuals for public rights of way use.

The regulations describe three types of permits available to authorize a permittee to install, maintain, and operate wireless telecommunications facilities in public rights of way: (1) eligible facilities requests; (2) safe harbor requests; and (3) requests requiring a showing of prohibition or effective prohibition. These permits are referred to as "wireless permits" to distinguish them from other permits that may be needed before work begins on a particular project. As set forth in more detail in Section 3, applications qualifying as a safe harbor request may receive a wireless permit to install wireless telecommunications facilities in particular areas of the City without a special showing of need. The facilities must be concealed, or of a size such that their visibility is limited, and the facilities cannot be modified (except as these regulations allow) without approval of the City.

Work associated with a wireless telecommunications facility that involves excavation (for example, placement of a new utility pole or replacement of an existing utility pole) requires the same sorts of permits that are required for all excavations. Work that requires blocking traffic lanes in city-controlled public rights of way requires traffic plans, and so on. While these regulations reference some of those requirements, an applicant is expected to closely review and work with City departments and commissions to ensure all permits are obtained.

These regulations shall not be applied to create any conflict with applicable state law or applicable and enforceable agreements or easements.

These regulations do not directly apply to wireless telecommunications facilities located off the public rights of way. Wireless telecommunications facilities off the

public rights of way are reviewed and approved in accordance with the Zoning Code of the City of Wilmington. These regulations may, however, be considered when an application is for placement of facilities off the public rights of way on facilities similar to those in the public rights of way.

Likewise, a wireless permit is not required for property that is owned or controlled by the City (primarily traffic signals and street lights). Before using these facilities, a wireless service or infrastructure provider must enter into an agreement with the City that establishes the terms and conditions under which the property can be used, including the designs that must be utilized. However, other permits (building, excavation, electrical and so on) are still required.

### **1.3.1 General Conditions for Private Support Structures**

An applicant that wishes to install a wireless telecommunications on privately or non-City controlled property in the public rights of way (generally, utility poles), or to install their own support structure in the public rights of way within the City of Wilmington must have:

- (a) an appropriate authorization to use the public rights of way;
- (b) the permission of the person that owns any support structure that will be used by the wireless telecommunications facility;
- (c) a wireless permit from the City for installation of a particular wireless telecommunications facility at a particular location; and
- (d) other permits that may be required by applicable laws and standards.

### **1.3.2 General Conditions for Publicly Owned or Controlled Support Structures**

An applicant that wishes to install a wireless telecommunications on City-owned or controlled support structures in the public rights of way (generally, street lights and traffic signals) within the City of Wilmington must have:

- (a) an appropriate authorization to use the public rights of way;
- (b) an agreement with the City, and, where required with any other person that may have an interest in the support structure for use of the structure;
- (c) other, non-wireless permits that may be required by applicable laws and standards.

## **1.4 Eligibility and Exemptions.**

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The intent of these regulations is, to the extent required by law, to treat each eligible applicant in a neutral and nondiscriminatory manner with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for right-of-way use. It is further the intent of these regulations to ensure that the City knows what entities are occupying the public rights of way and what wireless telecommunications facilities have been installed by those entities; to ensure that entities understand their obligations with respect to use of the public rights of way; to ensure that entities occupying the public rights of way do not harm the public or property, or unduly interfere with, or delay public or private projects that require use of the public rights of way or otherwise unnecessarily incommode the public; and in order to advance public safety to minimize clutter and enhance the appearance of the community, minimize the size and number of facilities in the public rights of way.

#### **1.4.1 Eligibility to Install.**

Prior to obtaining a wireless permit described in these regulations, a person who will own, operate, manage or control wireless telecommunications facilities in the public right of way must have an authorization that allows it to occupy the public rights of way for the purpose of maintaining and operating those wireless telecommunications facilities. There may be exceptions for customers of entities that hold authorizations, where the customers provide assurances that provide protections to the City. A person who will own, operate, manage or control wireless telecommunications facilities in the public right of way and that proposes to use a support structure owned or controlled by a person other than the City, must have the written permission of that person to use the support structure.

The facilities that can be installed must either be for a utility purpose (e.g., remote meter reading); for a governmental purpose, including public safety; or for a purpose specified in an authorization.

#### **1.4.2 Duty to Obtain; Exemptions.**

An application must be filed, and a wireless permit is required prior to installation of a wireless telecommunications facility in the public rights of way. The wireless permit must be obtained before any construction activity is performed in the public rights of way, including but not limited to replacing or modifying the support structure of the wireless telecommunications facility. However, this permit requirement does not apply to:

**1.4.2.1** Installation of micro-wireless telecommunications facilities mid-strand on existing strand between two existing utility poles, where the installation provided that the cumulative volume of all wireless facilities on the strand is comparable to other facilities commonly installed on strand; does not touch or interfere with other facilities; does not cause excessive strand sag; and provided further



that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles. The cubic volume permitted under this standard is 2.5 cubic feet, calculated by drawing an imaginary prism or enclosure that is rectangular or a cylinder and is able to enclose all the wireless telecommunications facilities on a strand, which will include all clamps, bolting extenders and similar equipment.

**1.4.2.2** Ordinary maintenance, modification replacement or removal of any wireless telecommunications facility, where the same does not increase the physical dimensions of the wireless telecommunications facility. By way of example, a modification of an antenna that increases its weight, and requires additional guying or replacement of a pole, would not be exempt. While these activities do not require a wireless telecommunications facility permit, depending on the work required, a traffic management plan or other permit may be required.

**1.4.2.3** Except as provided in Section 7, placement on City-owned or controlled vertical structures (such as street lights). The City will review the design for any proposed facility on City-owned or controlled vertical structures through the licensing/contracting process.

### **1.4.3 Other Permits/Licenses May Be Required.**

Applicants should be aware that in some instances, different entities may control different parts of what is colloquially characterized as a "public right of way." Thus, an applicant may require permission from the State or other person, in addition to permission from the City, to occupy the public right of way. It is the applicant's responsibility to determine what permits, licenses and other consents are required.

Wireless permits issued pursuant to these regulations are not in lieu of leases, licenses or easements that may be required to use or occupy other public or private property in the public rights of way. No wireless permit issued pursuant to these regulations shall be valid in the absence of the same, and an applicant may be required to provide proof that it has any additional consents that may be required before a permit will issue.

The City will require a person that wishes to use facilities that the City owns or controls to enter into appropriate agreements with the City. As part of entering into the agreements, the City will be exercising rights that any proprietary owner exercises, including defining precisely what may be permitted, how it will integrate with the existing facilities, and the compensation for use. However, while the City retains all its rights with respect to permitting attachments to its

properties, it does intend to adopt standardized conditions on use so that it may promptly respond to requests for use. Proposed agreement terms are set out in Section 7, along with the steps that should be taken to obtain an agreement for use of public facilities.

#### **1.4.4 Modifications.**

It is anticipated that these Regulations and the proposed terms in Section 7 related to wireless telecommunications facilities will require revisions from time to time, and the City reserves the right to modify these regulations at any time, through the required administrative process, as well as require existing wireless telecommunications facilities to comply with the requirements when necessary to protect the health or welfare of the public, or where required to avoid an unlawful discrimination within the meaning of Federal law. The revisions may include adding or deleting pre-approved designs to these regulations, on its own initiative, or upon request. Interested parties will be given an opportunity to comment on proposed changes prior to their adoption.

## **2. APPLICATIONS FOR PLACEMENT OF WIRELESS TELECOMMUNICATIONS FACILITIES.**

### **2.1 Types.**

**2.1.1** An application may be submitted as an eligible facilities request pursuant to the requirements in Section 3.2.

**2.1.2** An application may be submitted as a “safe harbor” request pursuant to the requirements in Section 3.3.

**2.1.3** An application may be submitted seeking permission to install a wireless telecommunications facility that does not fit within the safe harbor pursuant to the requirements in Section 3.4.

### **2.2 Submissions.**

#### **2.2.1 How submitted.**

Applications must be submitted electronically to [www.wilmingtonde.gov](http://www.wilmingtonde.gov), with all text in a searchable format accessible using standard commercial software, such as Microsoft Office and Adobe Acrobat without the need for the City to convert the materials; all maps should be in ESRI geodatabase formats, and for all technical drawings or if work was performed in a CAD environment, the CAD base map must be provided, along with files in the DWG or DGN formats. If an Applicant submits information in a form that cannot be read or searched by the City, the application will be treated as incomplete. For any application for a wireless telecommunications facility that will be in a public right of way within a

supplementary district as described in Chapter 48, Art. IX, Div. 2 of the City Code, copies of the application must be also be submitted on the same date to the Design Review and Preservation Commission (via paper copies, unless electronic copies are permitted, in accordance with applicable City requirements for submission to this Commission).

Required fees must be submitted electronically along with the application if that service is available. Otherwise, required fees must be hand-delivered to the City on the same day the application is submitted electronically to the City, such fees being delivered to:

City of Wilmington Department of Finance  
Louis L. Redding City/County Building  
800 N. French Street  
Wilmington, DE 19801

Applications may only be submitted on days and at times that the City is open for business.

The foregoing rules also apply to supplementary submissions and communications regarding a pending application.

Complete applications and fees associated with any permit that the Applicant contends must be acted upon by the same date as the wireless application must be filed on the same date as the application for a wireless permit, and if any is not included, or the application for any permit is incomplete, all applications may either be denied or declared incomplete.

NOTICE: All work in the public right of way authorized by a permit must be completed within nine (9) months after the permit is issued. Permits expire automatically, and if expired, a new permit application must be submitted, along with all relevant fees.

## **2.3 Fees.**

### **2.3.1 Amounts.**

Application fees for wireless permits are designed solely to recover the actual cost to the City of processing the applications. For each wireless telecommunications facility for which approval is sought, a fee of one hundred (100) dollars must be submitted along with the application.

The Applicant must deposit a retainer of two thousand (\$2,000.00) dollars per wireless telecommunications facility for which a permit is sought, to cover the actual costs estimated to be incurred in connection with the review of the permit application(s). During the review process, the City will make periodic draws

against the retainer to offset actual costs incurred relative to the Applicant's permit application(s).

If the initial retainer on deposit falls below an average threshold of five hundred (\$500.00) dollars per active permit application, then an additional deposit will be required to restore the retainer to meet an average threshold of one thousand (\$1,000.00) dollars per facility for the remaining active permit applications under review.

In addition to the initial application fee(s), and any retainer on deposit, an Applicant must agree to pay any actual costs, in excess of the initial application fee(s) and any retainer on deposit, that may be incurred in connection with the review of the permit application(s).

### **2.3.2 Refundability.**

The City will not refund fees if the application is denied, or if an application is withdrawn by the Applicant.

If permit applications result in approvals, and there are residual funds on deposit as retainer, after all of that Applicant's active permit applications have been resolved and all actual costs have been recovered by the City, the remaining balance of the retainer on deposit may be refunded upon written request by the Applicant. Alternatively, the Applicant may request that these remaining funds be used to offset the retainer deposit required for future submissions.

## **2.4 Content**

### **2.4.1 Applicants and General Requirements.**

Applications are available online at [www.wilmingtonde.gov](http://www.wilmingtonde.gov).

An application must be signed by all persons that will own or operate any part of the facility that is the subject of the application. Each application must provide a clear location and an identifying number or name for each wireless telecommunications facility. Each person signing the application will be jointly and severally responsible for fees owed to the City, and each is responsible for the accuracy of the application.

The application must show that the facilities and work proposed in the application will comply with all requirements in these regulations and any applicable laws and standards.

Applications must be accurate, and must include detailed descriptions of the work that is the subject of the application. An application shall include pre-construction work, construction work and restoration work required, along with a

description of the facilities and property that are the subject of or affected by the applications, and a pre- and post-construction description of the same.

Each application (except an eligible facilities request) should include a map showing the area within and outside the public rights of way, where a wireless telecommunications facility could be placed while still satisfying the wireless service objectives of the Applicant. Search area maps prepared in the course of identifying proposed locations will satisfy this requirement.

If an application is part of a planned network deployment that will involve multiple sites, the deployment must be described, and the total number of facilities that are projected to be required must be identified.

#### **2.4.2 Information required.**

In addition to providing the information required by Section 2.4.1, applicant must provide all information required for the type of approval sought. For example, less information is required for an eligible facilities request, than is required for a safe harbor request, and additional information is required if applicant claims denial would result in an effective prohibition.

#### **2.4.3 Public Disclosure and Location Information.**

The City will make applications available to the public electronically.

#### **2.4.4 Additional Information.**

The City may request from any person on the application additional information relevant to determining whether the application should be granted, denied or conditioned. Failure to timely provide the information may be grounds for denying the application.

#### **2.4.5 Incompleteness.**

**2.4.5.1** The City may issue a notice of incompleteness if the Applicant fails to comply with any requirement in this Section 2. Within thirty (30) days after receiving an application, or if shorter, the time by which a City must notice incompleteness under applicable federal regulations, the City will determine whether the application is complete. If incomplete, the City will send a written notice identifying the reasons the application is incomplete, citing to the relevant requirements of the Wilmington City Code, these regulations, and applicable laws and standards. The City may, alternatively, reject an application that it deems materially incomplete, and provide a written denial of the application, identifying the grounds for the rejection.

**2.4.5.2** The Applicant must, submit supplementary materials to remedy the deficiencies identified in the notice of incompleteness within ten(10) days after receiving notice.

**2.4.5.3** The City will review supplemental materials submitted in response to a notice of incompleteness for completeness. If the supplemental materials fail to remedy the deficiencies identified in the notice of incompleteness, the City will, within ten (10) days after receiving the supplemental materials, or if shorter, the time by which a City must notice incompleteness under applicable federal regulations, send a further written notice of incompleteness consistent with Section 2.4.5.1.

**2.4.5.4** If supplementary materials are not submitted in the time specified in section 2.4.5.2, or the application remains incomplete thirty (30) days after the date the application was submitted, considering the supplementary materials submitted, the City may reject the application by sending a letter to the Applicant identifying the application and the reasons for rejection.

**2.4.5.5** Times for action on an application after notice of incompleteness will be tolled and calculated in accordance with applicable FCC regulations. The City and Applicant may agree on an extension of the times provided in this Section 2.4.5, provided that the extension does not prevent the City from meeting any federal or state deadlines for action on an application.

## **2.5 Pre-Application Requests and Meetings.**

The City is willing to hold pre-application meetings with persons interested in submitting applications for wireless telecommunications facilities, to answer questions about the application process and the permits required in connection with a project, or to review overall project plans. No fee is required for such a meeting. A meeting is not mandatory, but it is highly recommended.

The City will, for no fee, answer written questions about the application process. If a potential Applicant will be subject to a special service fee, Applicant should request a meeting with the City to establish what fee will be required as part of the submission.

## **2.6 Pre-Approval of Designs.**

Section 3.3 establishes a “safe harbor” for installations that satisfy certain design criteria, including designs that have been pre-approved by the City. Any person may at any time propose designs that they believe should be included within the safe harbor, or propose modifications to the safe harbor. Similarly, persons may



ask that certain wireless telecommunications facilities be excluded from any type of permitting review.

A request for pre-approval of a design is not an application to install a wireless telecommunications facility, and should not be submitted on the application forms. A request for pre-approval of designs must be submitted to the Small Cell Coordinator at the following address, and contain the following information:

Commissioner/ Small Cell Coordinator  
Wireless Telecommunications Facilities  
Department of Public Works  
Louis L. Redding City/County Building  
800 N. French Street, 6th Floor  
Wilmington, DE 19801

ATTN: PROPOSED FACILITY AT [LOCATION AND IDENTIFIER TO BE  
INSERTED BY APPLICANT]

**2.6.1** Detailed engineering drawings showing the dimensions of all components associated with the wireless telecommunications facility.

**2.6.2** Photo-simulation to scale of the proposed wireless telecommunications facility and associated structure, before and after installation from at least two different angles (so that all equipment associated with the wireless telecommunications facility are identifiable).

**2.6.3** A description of the areas where the Applicant believes the design should be approved for use (by zoning classification).

**2.6.4** A general description of all the equipment that is necessary to the wireless telecommunications facility and where it appears in the detailed drawing and photo-simulation.

**2.6.5** The concealment elements that would be associated with the design, and a clear identification of any changes Applicant believes could be made to the design (if any) under 47 U.S.C. Section 1455 without the discretionary review of the City.

The Commissioner may approve a design for inclusion in the safe harbors, or modify the pre-approved design after consulting with boards and commissions that may have design approval authority within certain districts, and complying with other applicable requirements of the City Code.

### **3. CONSIDERATION OF APPLICATIONS FOR WIRELESS TELECOMMUNICATIONS FACILITIES.**

### **3.1 Overview.**

There are four (4) circumstances under which a wireless telecommunications facility can be placed in the public rights of way:

**3.1.1** First, an application may be approved if it is an eligible facilities request. Requirements for eligible facilities requests are set forth in Section 3.2.

**3.1.2** Second, an application that is not an eligible facilities request may be granted if it falls within one of the safe harbors. Requirements for applications falling within the safe harbor provisions are set forth in Section 3.3.

**3.1.3** Third, an application may be granted if it is not an eligible facilities request, and the Applicant shows that denial prohibits or effectively prohibits the provision of personal wireless services under federal law, and approval of the application is required by federal or state law. Requirements for these applications are set forth in Section 3.4.

**3.1.4** Fourth, facilities can be placed on structures owned or controlled by the City. These rules do not apply to placement on city-owned or controlled structures, as relevant issues will be addressed in the contracting process. Because the City is the purchaser of service with respect to any investor owned street light pole, and it may require the pole to be replaced or removed as a matter of right, use or replacement of any investor-owned street light pole will require the consent of the City, and will be subject to conditions that may apply to structures owned or controlled by the City and are not addressed in the safe harbors below.

### **3.2 Eligible Facilities Request – Requirements.**

An application for an eligible facilities request may only be granted if:

**3.2.1** The Applicant submits a complete application and demonstrates that the request qualifies as an eligible facilities request; and

**3.2.2** The application satisfies the requirements of Section 3.7.

### **3.3 Safe Harbors – Requirements.**

#### **3.3.1 Generally.**

An application for a proposed wireless telecommunications facility that satisfies the requirements of this Section 3.3 falls within the “safe harbor” permitting process and is not required to demonstrate that denial of the application prohibits

or effectively prohibits the provision of personal wireless services under federal law.

An application for a proposed wireless telecommunications facility that does not satisfy the requirements of Section 3.2 or Section 3.3 must comply with the requirements of Section 3.4.

An application to install a wireless telecommunications facility may only be issued under the safe harbor permitting process if all the following requirements of Section 3.3 are satisfied:

### **3.3.2 General Safe Harbor Requirements.**

An application to install a wireless telecommunications facility must meet the following requirements, in addition to all other requirements set forth in this Section 3.3:

**3.3.2.1** A proposed wireless telecommunications facility must:

**3.3.2.1.1** consist of a design that has been preapproved in accordance with Section 2.6 and complies with Section 3.3.3, or that complies with the specifications set forth in Section 3.3.4; and

**3.3.2.1.2** satisfy the requirements of Section 3.7.; and

**3.3.2.1.3** comply with all applicable laws and standards. Without limitation, the obligation to comply with applicable laws and standards requires that all elements of the wireless telecommunications facility once installed, must comply with "clear zone," "lateral offset" and "breakaway" requirements, if applicable.

**3.3.2.2** The Commissioner's Designee and Commissioner must find that the wireless telecommunications facility does not create a risk to persons or properties.

**3.3.2.3** The wireless telecommunication facilities must not violate the noise ordinances of the City if fully utilized, and considering the measurable noise at the proposed site generated by existing wireless telecommunications facilities, if any. For example, if a wireless telecommunications facility includes space for three (3) radio units, each of which must be cooled, the Applicant must show that even when fully occupied, the facility would not violate the City's noise ordinances.

**3.3.2.4** No towers shall be permitted in the public rights of way, and no wireless telecommunications facilities shall be permitted above-ground in underground areas, except for stealth facilities, the design of which has been preapproved by the City.

**3.3.2.5** The wireless telecommunications facility must include concealment elements (such as, by way of example, size and proportion limits, coloration and shielding) such that its physical dimensions cannot be increased except with the discretionary consent of the City.

### **3.3.3 Pre-Approved Designs – Additional Requirements.**

**3.3.3.1** A proposed wireless telecommunications facility using a preapproved design must use a design that has been approved for the particular area within which the wireless telecommunications facility is to be placed.

**3.3.3.2** Where multiple designs are approved for an area, a proposed wireless telecommunications facility must use the design most appropriate to the location where the facility is to be placed, taking into account safety issues, aesthetic impacts and surrounding facilities.

**3.3.3.3** A wireless telecommunications facility proposed to be located in a waterfront district as that term is defined in Chap. 48, Art. VIII (Waterfront Districts); or in the public right of way in a supplementary district subject to Chap. 48, Art. IX, Div. 2 (Historical Districts/Neighborhood Conservation Districts), must be specifically approved for use in the public right of way in that district and must also comply with the requirements in Section 3.3.5.

### **3.3.4 Safe Harbors Where Facilities Meet Specifications – Additional Requirements.**

Safe harbor treatment may also be accorded to an application that does not use a pre-approved design, which proposes to place a base station on existing or replacement privately-owned utility poles (POPs) in the public right of way but that satisfies the requirements of Section 3.3.2 and Section 3.3.4. In a waterfront district as that term is defined in Chap. 48, Art. VIII (Waterfront Districts); or the public right of way in a supplementary district subject to Chap. 48, Art. IX, Div. 2 (Historical Districts/Neighborhood Conservation Districts), the proposal must also satisfy the requirements of Section 3.3.5.

For purposes of this section, a “replacement” POP is a pole that has been installed to replace, or which will replace an existing utility pole in the public

rights of way in order to accommodate a wireless telecommunications facility. The existing pole will then be promptly removed by its owner. An application will be treated as an application for a new support structure in the public rights of way, and will not fit within the safe harbor unless there is a clear plan and timetable for removal.

**3.3.4.1** Any replaced poles must be no taller above ground level than the existing pole; or the lesser of 38'6" or 10' taller than the original pole unless the City approves an exception. An exception may be granted if the Applicant demonstrates to the City's satisfaction that the pole size must be increased to permit provision of services by public utilities or franchised cable systems. The replacement pole, including all required guying, may not intrude on any sidewalk or passageway more than the existing utility pole, and may in no case be more than ten (10) percent larger in circumference than the existing utility pole, considering the actual dimensions of the pole. Guy wiring must be comparable to that of the pole being replaced.

**3.3.4.2** Only one base station may be installed unless the size of the base station elements, considered cumulatively as if the wireless telecommunications facilities were a single base station, meet the size requirements under these regulations.

**3.3.4.3** The antenna(s) associated with the base station(s) may be enclosed within the supporting structure or in a single vertical shroud that is designed to appear like a continuous vertical extension of the POP, so that it is not apparent that it is an antenna. The antennas and their enclosures shall not extend more than forty-eight (48) inches in length, extending vertically from the base, either at the top of the pole or on the related equipment housing, except that up to twelve (12) inches in additional height may be permitted for connectors to the POP. The total volume for all antennas and enclosures on a single support structure or pole may not exceed six (6) cubic feet.

**3.3.4.4** Alternatively, a single antenna may be installed as a side mount so long as the antenna is not wider in diameter than 15" and no taller than 2 feet, mounted as close to the pole as possible to minimize its visual impact. .

**3.3.4.5** Equipment housing may be enclosed within the POP. Alternatively, the equipment housing on any POP must be centered and placed on a single side of the POP. The term equipment housing includes all parts of the wireless telecommunications facility other than the antenna, electric meter, vertical cable runs, disconnect

switches, and vertical supporting structures. Equipment housing mounted on the pole should be no greater than fifteen (15) inches wide and fifteen (15) inches deep so that the housing is not readily visible to a casual observer on the opposite side of the pole. Wider equipment housing units are permitted where, with appropriate concealment, such as signage placed at an appropriate height (a stop sign, for example), the equipment housing is hidden. Equipment housing should be of a uniform depth, not exceeding 15" from the pole to which it is attached so that it appears, as far as possible, like part of the pole. Sizes are intended to be cumulative, reflecting the sizes of the equipment housings for all wireless telecommunications facilities installed on a particular POP. Total volume of all equipment housings should not exceed 28 cu. ft.

**3.3.4.6** Exterior mounted equipment housings shall be placed to avoid interfering or creating any hazard to any other use of the public rights of way, and with the lowest edge of any exterior mounted equipment at least eight (8) feet above ground level. Equipment should not project over any street unless above the level approved for placement of wires across streets.

**3.3.4.7** The location chosen for all elements of the wireless telecommunications facility must otherwise maintain the integrity and character of the neighborhoods and corridors in which the facilities are located; which, without limitation requires that each element of the wireless telecommunications facility should be placed to minimize visibility from adjoining properties, with special care taken in residential areas to avoid placement directly in front of windows or doors, and to avoid placement of ground-mounted equipment cabinets on property frontage in residential areas.

**3.3.4.8** The scale and appearance of the wireless telecommunications facilities, and any support structures to be installed, must be consistent with the general character of the neighborhood.

**3.3.4.9** Ground-mounted equipment and enclosures associated with a wireless telecommunications facility shall be permitted only where it is consistent with the portion of the corridor in which it is to be placed, and shall be undergrounded, located in alleys or otherwise shielded (as appropriate to the corridor) to be as unobtrusive as possible. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic. Above-ground, ground-mounted equipment and enclosures associated with wireless telecommunications facilities for a particular support structure may



have maximum dimensions of fifty (50) inches (H) by thirty-six (36) inches (W) by twelve (12) inches (D), except where part of a stealth facility acceptable to the City for placement in the corridor.

**3.3.4.10** Wiring and cabling shall be neat and concealed within a pole where possible or placed within a conduit flush to the support structure.

**3.3.4.11** Electric meters are not permitted if a flat rate service is available. If electrical use must be metered, the electric meter must be installed inside the POP where that is possible given the other size limitations of these regulations. If not possible, any required meter shall be installed in the public utility easement, and underground unless prohibited by other applicable regulations. Otherwise, the meter with the smallest form factor may be installed to the exterior of the POP, on the same side as the equipment housing.

**3.3.4.12** All parts of the wireless telecommunications facility must be appropriately colored to minimize visibility. All pole-mounted equipment housing must be non-reflective. Antennas and shrouds shall be colored to have the least visual impact possible. Ground-mounted equipment shall be colored consistent with its surroundings.

**3.3.4.13** The paint type must be durable, weather-resistant, matte or flat, and colored in keeping with the corridor and supporting structure to minimize visibility.

**3.3.4.14** No writing, symbol, logo or other graphic representation which is visible from the nearby street or sidewalk shall appear on any exterior surface unless required by agreement with the City, applicable law and standards, or as a City-approved concealment element, except that the Applicant shall tag all attachments to poles to allow for ready identification of the type of attachment, the owner and emergency contact information, subject to ongoing City inspection to ensure appropriate tagging.

**3.3.4.15** Base stations (excluding approved stealth facilities) must, except at intersections, be at least two hundred fifty (250) feet from the nearest base station occupied or controlled by the same occupant, on POPs, support structures, or towers in the public rights of way absent a showing accepted by the City that the installations proposed are necessary to provide service, and are designed and placed to the extent possible to reduce the appearance of clutter in the rights of way; or that approval is required by Federal or State law.

### **3.3.5 Additional Requirements for Special Districts.**

In a waterfront district as that term is defined in Chap. 48, Art. VIII (Waterfront Districts); or in the public right of way in a supplementary district subject to Chap. 48, Art. IX, Div. 2 (Historical Districts/Neighborhood Conservation Districts), to be eligible for “safe harbor” treatment:

**3.3.5.1** The Applicant must have submitted the design for its wireless telecommunications facility to the appropriate design board along with such other information as may be required by the appropriate design board; and

**3.3.5.2** The design proposed must be approved by the appropriate design board for the locations proposed.

## **3.4 Applications for Wireless Telecommunications Facilities Falling Outside the Safe Harbor.**

An application for a wireless telecommunications facility that is not an eligible facilities request and that falls outside the safe harbor may nonetheless be permitted if the Applicant shows to the satisfaction of the City that it satisfies the requirements of Section 3.7 and:

**3.4.1.1** Denial would result in an effective prohibition in the provision of personal wireless services within the meaning of federal law or otherwise violate applicable laws or standards, under circumstances such that deployment of the facilities must be authorized. The Applicant bears the burden of showing deployment must be authorized, and without limitation, unless prohibited by applicable law or standards, the Applicant must show it has reasonably considered different designs, form factors and locations on and outside of the public rights of way, and chosen the one least intrusive.

**3.4.1.2** The proposed wireless telecommunications facility will conform to the requirements of this Section 3 to the extent possible. For example, if an Applicant shows that federal law requires the City to authorize it to install an antenna that extends higher than otherwise permitted under these regulations, the Applicant may be required to install the shortest antenna that will avoid Federal preemption, and may be required to comply with these regulations for other elements of the wireless telecommunications facility. For example, a showing that a higher antenna is required would not excuse a failure to show that the facility complies with the City’s noise ordinances.

## **3.5 Administrative Consideration.**

### **3.5.1 Administrative Consideration.**

The Commissioner's designee, initially the Small Cell Coordinator, will review the placement of wireless telecommunications facilities wholly in the public rights of way in accordance with Sections 42-706 through 42-709 of the City Code.<sup>3</sup> The Deputy Commissioner may review any decision of the Small Cell Coordinator and must review a decision that requires a determination that denial would result in an effective prohibition.

The Small Cell Coordinator and, as appropriate on review or appeal, the Deputy Commissioner or Commissioner will request recommendations from appropriate boards. Actions on applications will be taken within deadlines that may apply under applicable law and standards. Decisions on applications will be in writing, granting, denying or conditioning the application, based upon independent investigation, and information timely presented with respect to the application.

An application shall be granted if it is determined (after all reviews are completed) that the application satisfies the requirements of the Wilmington City Code, these regulations, and applicable laws and standards; otherwise, it shall be denied, or may be granted subject to condition.

If the Applicant claims and it is determined that the application qualifies as an eligible facilities request, or falls within a "safe harbor," the application may be approved without a public hearing. The application may also be approved subject to conditions where the conditions would bring the wireless telecommunications facilities within the safe harbors. In other cases, a public hearing must be scheduled on the application.

As FCC rules envision, if the City determines that the facility is not an eligible facilities request, the City will notify the company, and request it provide information that is missing from the application. This effectively starts a new FCC shot clock once the missing information is submitted. If an Applicant claims that it satisfies the "safe harbor" standards, and the City concludes otherwise, the City will provide the Applicant an opportunity to make a showing that the City is nonetheless required to issue the permit under federal law, as long as the

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<sup>3</sup>The placement of wireless telecommunications facilities is not subject to zoning review, but in determining whether a proposed design is appropriate, the Commissioner's designee and the Commissioner shall consider the characteristics of the area in which a facility is to be placed, including the characteristics of other facilities in the rights of way, on the same side of the street, in the corridor in which the wireless telecommunications facility will be placed.

Applicant and the City agree upon a schedule for submission of that information that will not result in a violation or presumptive violation of any state or federal law or regulation.

The Commissioner may enter into agreements or grant requests for extensions of time (including the time for filing an appeal), provided the extensions do not prevent timely final action on an application under applicable law and standards. No decision on appeal shall be final until a written decision issues.

### **3.5.2 Burden.**

As with any permit, it is the burden of the Applicant to show that it satisfies all relevant requirements, and is entitled to the wireless permit.

## **3.6 Inspections by City.**

The Small Cell Coordinator will inspect each proposed location to determine if the application is accurate, to better assess the impact of the proposed wireless telecommunications facility on the corridor and adjacent properties, and to identify whether the impact of the proposed facility can be minimized in a manner consistent with this Manual and the City Code, by moving it, shielding it, or by some other means (undergrounding equipment, for example).

## **3.7 Denial Required for RF Non Compliance and Unsafe Facilities.**

No permit shall be issued or effective unless the Applicant has provided a certified engineering analysis by a qualified registered engineer in the State of Delaware that demonstrates that the wireless telecommunications facility will comply with FCC guidelines governing RF emission exposure. Each wireless facility shall at all times fully comply with applicable FCC guidelines for RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit.

No permit will issue in the following circumstances:

**3.7.1** Where the Commissioner or the Commissioner's Designee determines that the capacity no longer exists for additional facilities to be placed in the proposed location without jeopardizing the physical integrity of other facilities at the proposed location and/or the safe use of the public rights of way by vehicle, bicycle, or pedestrian.

**3.7.2** Where placement would violate or result in a violation of any applicable law or standard that applies to other users of the public rights of way. A proposed installation impacting existing ADA elements, for example, must be denied if accessibility of the final design has not been demonstrated or other mitigation is not made available during construction. Applicants are

cautioned that there are certain districts within the City, including Chap. 48, Art. XII (Floodplains) and Art. IX, Div. 4 (source Water Protection Area) where environmental or other studies may be required for facilities, or for work associated with facilities.

**3.7.3** Where the Applicant, or the entities required to sign the application do not have all authorizations required to occupy public rights of way.

**3.7.4** Where the application is incomplete.

**3.7.5** Where the Applicant fails to accept the conditions of the permit, which shall be deemed to require compliance with the City Code, and which shall be deemed issued subject to these regulations and applicable laws and standards.

**3.7.6** For speculative facilities. An application must be from a provider of wireless telecommunications services, with concrete plans to provide services; or from a provider of wireless telecommunications facilities, who has a contract requiring use of the wireless telecommunications facility proposed.

**3.7.7** Where the City receives conflicting applications for permits, or where work, if conducted by Permittees on the schedule proposed would create health or safety hazards or collectively result in undue disruption, the City may reject the applications as submitted and require Applicants to apply jointly for permits or to otherwise coordinate to eliminate the hazard or the disruption.

**3.7.8** Sidewalks shall be maintained open and accessible. Unless it is not possible to do so, new or replacement support structures shall maintain a three (3) foot clearance from sidewalks and roadways or be located behind the sidewalk adjacent to the public right of way line. New or replacement support structures must maintain a minimum five (5) foot clearance from the outside edge of driveway aprons and pedestrian connections.

## **3.8 Appeals.**

Any Applicant adversely affected by a decision of the Small Cell Coordinator may appeal the decision to the Commissioner by filing a notice of appeal to the Commissioner's Office at the address in Section 2.6, and identifying the decisions that are being appealed. The appeal must be received within seven (7) business days of the date Applicant is notified of the written decision, which notification may be electronic or by mail. The Commissioner may decide the appeal based on the information before the Small Cell Coordinator, or receive

additional information and conduct such public hearings as appropriate. In determining the procedures to be followed in a particular case the Commissioner shall take into account any applicable law and standards governing the timing for a final decision.

## **4. CONDITIONS OF PERMIT**

Any wireless permit issued pursuant to these regulations is subject to the following conditions in addition to any other requirements of applicable laws and standards:

### **4.1 Length.**

**4.1.1** A permit, other than a permit issued in response to an eligible facilities request, shall be valid for the period required to complete the initially authorized construction, plus ten (10) years for a wireless telecommunications facility that falls within the City's safe harbors, and five (5) years otherwise, or such longer period as may be required by State law. The period required to complete the initial construction may not exceed twelve (12) months. A permit may be renewed by the Commissioner for five-year intervals if the Applicant submits a renewal application to the Commissioner that demonstrates as follows:

**4.1.1.1** it has complied with the conditions of the permit,  
and

**4.1.1.2** the design remains a safe harbor design (or if the Applicant is willing to modify the facility to conform to an approved design) or if the Applicant demonstrates that denial of renewal would be an effective prohibition.

**4.1.2** A permit for a modification for an eligible facilities request will only remain valid as long as the City is required by Federal law to approve eligible facilities requests, and if the facility is in compliance with all permit conditions.

### **4.2 Duty to Install and Maintain.**

The wireless telecommunications facility must be installed as approved, subject to such minor modifications as may be approved in writing by the City to address unanticipated installation issues that may arise in the course of construction.

The wireless telecommunications facility, and the persons who own, manage or perform any work on the wireless telecommunications facility, must comply with all the requirements of these regulations, the wireless permit and other applicable laws and standards.

### **4.3 Additional Conditions to Protect Health and Safety.**

The City may impose reasonable conditions upon the issuance of any wireless permit and the performance of the Permittee or Occupant in order to protect the public health, safety and welfare, to ensure the structural integrity of the public right of way, to protect the property and safety of other users of the public right of way, and to minimize the disruption and inconvenience to the traveling public.

### **4.4 Revocation.**

The City may revoke a wireless permit, issue stop work orders, impose penalties or take any other action available to it at law or equity in the event of noncompliance with the permit, these regulations or any other applicable law or standard.

If the City determines that a wireless permit was issued improperly, the permit may be revoked.

If multiple wireless telecommunication facilities are collocated on the same structure, and the combined facilities violate the noise ordinances of the City, permits will be revoked and the facilities removed in the reverse order in which they were installed until the combined noise does not exceed that permitted under the noise ordinances.

## **5. GENERAL RULES FOR PUBLIC RIGHT OF WAY USE**

### **5.1 Standards Apply.**

All facilities in the public rights of way, including wireless telecommunications facilities, must comply with standards for construction and use designed to ensure protection of the public rights of way, the public, and property. Occupants, and persons performing work on the wireless telecommunications facilities on their behalf are reminded to review all applicable manuals and regulations for placement of facilities in the public rights of way, and to comply with all requirements under applicable law and standards for notification of utilities. A failure to comply with those standards is a violation of these regulations. Further, Applicants are reminded to comply with all requirements for permits (excavation permits, building permits, electrical permits, traffic planning requirements and the like); a permit to install a wireless telecommunications facility is not a substitute for these permits.

Without limitation, the following provisions apply to all work performed under any permit for a wireless telecommunications facility and with respect to installation or continued occupancy of the public rights of way, whether or not subject to a



permit (as might be the case with installation of a wireless telecommunications facility on strand).

The City may remove wireless telecommunications facilities installed without the proper permits; require those facilities to be removed; issue stop work orders; impose penalties; revoke any permit associated with a wireless telecommunications facility, or take any other action it is permitted to take for failure to comply with these regulations, or other applicable laws and standards. A violation of these regulations is a violation of any license, authorization, or franchise, and may be ground for the revocation of the same.

## **5.2 Registration, Maps and Inspection.**

**5.2.1** Any person who occupies the public rights of way with a wireless telecommunications facility must register with the City by filing a registration form, with the City. This form is required even if a person also has filed and obtained permits for placement of wireless telecommunications facilities.

**5.2.2** Each occupant shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and certified by a professional engineer as accurately depicting the location of all of occupant's facilities in the public rights of way, and in an electronic format that will permit the City to import the information into its GIS systems. The City may specify any standard GIS format for submission of the information. If an occupant believes that it is prohibited by law from providing the information to the City, with respect to any facility, it will notify the City of the limitations that apply, and if the City agrees that the occupant is prohibited by law from providing the information to the City, the occupant shall be permitted to provide such information as it may lawfully provide to the City.

**5.2.3** All wireless telecommunications facilities are subject to testing and inspection by the City to determine compliance with these regulations, the permit authorizing a permittee to conduct work in the public right of way, and applicable laws and standards. Each occupant must produce records and reports relevant to determining compliance with these regulations, the permit authorizing a permittee to conduct work in the public right of way and applicable laws and standards to a location, and by a time as is specified by the City. Material produced may be marked as confidential, or a trade secret in accordance with Delaware law, and the City, or any person working on the City's behalf, will treat the materials produced consistent with the requirements of Delaware law.

**5.2.4** Occupants or Designees upon written request from the Small Cell Coordinator must inspect facilities and provide a written inspection report to the City. Such requests may require that Occupants or Designees include a report certified by a licensed registered engineer documenting compliance

with FCC RF exposure guidelines. Without limitation, each occupant or designee must install and maintain its wireless telecommunications facilities in compliance with all FCC regulations governing RF exposure.

**5.2.5** The City may require additional inspections or testing where it has a reasonable basis for believing that an occupant's facilities do not comply with these regulations.

### **5.3 Use Secondary.**

The use of public rights of way by any wireless telecommunications facility is a secondary use, subordinate to the use by the public and by other governmental entities. Occupants and permittees must reduce interference with the public use of the public rights of way to the greatest extent possible. Installation of wireless telecommunications facilities must not interfere with or disturb the public use of roads, or the convenience of any landowner more than is unavoidable or more than is authorized under a permit authorization or agreement.

### **5.4 No Cost to City.**

All work required to be performed in connection with a wireless telecommunications facility shall be performed at no cost to the City, whether or not expressly stated otherwise or within these regulations.

### **5.5 Other Conditions.**

Wireless telecommunications facilities, and any work performed in connection with wireless telecommunications facilities (including, without limitation, removal of the same) are subject to all applicable laws and standards, including, without limitation, City Code Secs. 42-710, 37-222, 6-116, 42-713, and 42-718. During construction authorized by a permit issued pursuant to these regulations, the permittee must comply with the following:

#### **5.5.1 Permits on site.**

The permit, plans and the specifications of construction and materials shall be available at all times on site for inspection by the City.

#### **5.5.2 Identification.**

The name of the company performing work in the public right of way must be prominently displayed on equipment or vehicles on site while the work is being performed in the public right of way. Upon verbal request the contact information for a person who has primary supervisory or management responsibility for the work being performed in the public right of way shall be available.

### **5.5.3 No disturbance of passage.**

Vehicular and pedestrian traffic must be maintained through all phases of construction except as specifically permitted by the City.

### **5.5.4 No storage**

No materials or equipment shall be stored in the public right of way, without prior written approval by the City, including but not limited to storing of equipment or materials under any roadside tree, and in no event may any debris be left in the public rights of way.

## **5.6 Facilities in Good Order.**

Occupants' facilities shall be maintained in good order, with excess cabling and wiring, abandoned, damaged or defaced property promptly removed, replaced or repaired. No hazardous materials may be stored on site during work related to a wireless telecommunications facility, or maintained at the wireless telecommunications facility except with the express permission of the City. The occupant or permittee will ensure that the site is maintained in compliance with City standards for work in the public rights of way, including but not limited to rules related to rubbish removal and coverage, traffic barriers, shielding, plating and warning signs, both during and at all times after installation.

## **5.7 No Property Right; Relocation and Removal.**

**5.7.1** Neither the issuance of a franchise, or authorization, or any wireless permit associated with construction of a wireless telecommunications facility grants any property right to occupy a particular portion of the public rights of way, and the City may require wireless telecommunications facilities to be removed or relocated, temporarily or permanently where convenient to the primary purposes of the roadway.

**5.7.2** Without limitation, wireless telecommunications facilities must be permanently or temporarily protected, altered, removed or relocated so as not to interfere with construction, operation, maintenance, repair or removal or relocation of public improvements, publicly-owned utilities or transportation systems or other public projects, including but not limited to sidewalk or street widening or narrowing, or changing street grade. Upon notice, occupant shall be responsible for protecting, altering, removing or relocating its wireless telecommunications facilities as necessary to eliminate any interference within a reasonable time, which time may be specified by the City, but shall not be less than 60 days. All such work will be at the expense of the Occupant, except as State law requires.

**5.7.3** Without limitation, if the wireless telecommunications facility, other than a stealth facility, or a facility located on a street light pole or traffic signal pole, is located in a corridor where the distribution system of the electric utility and the distribution lines of the incumbent local exchange carrier are relocated or required to be relocated underground, occupants must remove the wireless telecommunications facility within a reasonable time specified by the City. Removal shall be at the occupant's expense, except as State law requires.

**5.7.4** Without limitation, where a wireless telecommunications facility presents an imminent hazard to persons or property, or in the event of an emergency, the City may protect, alter, remove or relocate wireless telecommunications facilities.

**5.7.5** Without limitation, in the event that any public right of way is eliminated, discontinued, closed or de-mapped, any rights obtained pursuant to any permits issued with respect to such public right of way shall cease upon the effective date of such elimination, discontinuance, closing or de-mapping. Except as may be required by State law, an occupant is required, at its expense, to remove all its wireless telecommunications facilities from the public right of way within a reasonable time specified by the City.

**5.7.6** Without limitation, occupants shall temporarily relocate or remove wireless telecommunications facilities to permit use of the public rights of way by other entities holding a franchise from the City or State, or where a permit issued by the City (such as a permit for moving large structures) requires the movement of the facilities; and will promptly permanently move its wireless facilities to accommodate replacement or removal of utility poles. An occupant may require the person for whose benefit the work is being performed to bear the costs therefor, except as these regulations, or applicable laws and standards or contracts otherwise require.

**5.7.7** On expiration of any wireless permit, or authorization, or upon abandonment of use of a wireless telecommunications facilities for six (6) or more months, the City may, in addition to seeking all other available legal remedies, direct the occupant to remove, at the occupant's sole cost and expense, the wireless telecommunications facility, or any portion of the wireless telecommunications facilities designated by the City. If the City requires removal for abandonment, the City will first provide notice to the occupant, or the occupant's designee, and provide the occupant or occupant's designee an opportunity to show that the facility is in fact in use, or that it is entitled to a renewal of the expired franchise or permit. The City, in its discretion, may permit abandonment of a facility in place provided that title to the property is delivered free and clear to the City in a form acceptable to the City Solicitor.

**5.7.8** Where removal is required, removal shall be commenced within thirty (30) days, or a longer period identified by the City, after the date the City directs the public right of way Occupant to remove its Facilities and shall be substantially completed within ninety (90) days thereafter including all reasonably associated repair of the public right of way and other property and equipment of the City. The City may extend the time to complete removal where justified by the amount of work required or where conditions prevent performance of the work. Notwithstanding the foregoing, in the case of emergencies, or where there is an imminent hazard to persons or property, the City may require immediate removal or perform the removal itself.

## **5.8 Restoration**

In addition to complying with applicable laws and standards with respect to removal and restoration in the public rights of way:

### **5.8.1 Removal and restoration after replacing support structures.**

Where installation of a wireless telecommunications facility requires replacement of a utility pole or other existing structure, the occupant is responsible for ensuring that the utility pole or structure no longer in use is promptly removed, and all property affected by the removal restored in accordance with the preceding paragraph.

### **5.8.2 Restoration upon removal of wireless facility.**

When a wireless telecommunications facility, or portion thereof is relocated or removed, property affected by the installation, removal or the relocation shall be fully repaired, replaced or restored promptly by the permittee or occupant, at permittee's and occupant's sole cost and expense and to the satisfaction of the City, and in accordance with the City's standards for repair, replacement or restoration. Except as specifically otherwise required, property must be restored or replaced to its prior condition and location, and public rights of way must be restored to their prior conditions. Without limitation, this Section requires removal of any foundation or underground facilities that may have been placed in connection with the installation of the wireless telecommunications facility.

## **5.9 Timing for Work.**

All permits and plans required prior to restoration, repair and replacement must be obtained, and the work performed in accordance with those permits and City direction. The work must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or occupant or when work was prohibited by unseasonable or unreasonable conditions, the City may extend the date for completion of the work

upon receipt of a supplementary application for a permit extension which satisfies the restoration and repair requirements of City regulations.

In the event of emergency repair, defined as that necessary to prevent loss of life or property and to restore a pre-existing service when a service interruption occurs, and where it is impractical to obtain the permit in advance, the occupant must notify the City of such emergency repair as soon as possible and the appropriate permit shall be obtained as soon as possible during the next City working day.

### **5.10 Designee.**

Where a wireless telecommunications facility will contain equipment of multiple occupants, each is obligated to comply with these regulations. All occupants of the facility may designate a single person, also an occupant or permittee (the "designee") to install and maintain the facilities on behalf of all other occupants of the facility. In such cases, the following conditions apply: (i) no occupant or permittee other than the designee may enter, or have the right to enter into the public rights of way to perform any work related to the facilities; (ii) each occupant accepts joint and several liability for the acts and omissions of the designee; (iii) the City may treat the entirety of the facility as if it were owned by designee for all purposes, including but not limited to, removal or relocation; (iv) the designee has an authorization for installation and maintenance of the wireless telecommunications facilities; (v) a breach of any occupant's or permittee's obligations (including a failure to pay any fees owed to the City) may be treated as a breach of the designee's obligations.

### **5.11 No City Liability.**

The City shall not be liable for any damage to or loss of any occupant's wireless telecommunications facilities (or the facilities of persons performing work on their behalf) within the public right of way, except as may be required by State law and then subject to limits that may be established by law. Nothing in these regulations is intended to waive any immunities that the City has, or to prevent the exercise of any rights the City has, including rights of eminent domain.

Occupants and those performing work for them shall be responsible to the City for all damages suffered by it, arising out of their acts and omissions, including but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the occupant or those performing work for them to timely perform any obligations under these regulations.

## **6. SECURITIES.**



## **6.1 Applicability.**

The fee, liability insurance and indemnity provisions of these Regulations shall remain in full force and effect during the entire period of removal and associated repair of all public rights of way and other property and equipment of the City, and for not less than one hundred twenty (120) days after the restoration period and any guarantee and maintenance period associated with restoration of the public rights of way.

## **6.2 Indemnity.**

Before commencing any work, and as a condition of occupancy, each permittee and each occupant (Indemnitors) shall execute an indemnity in a form acceptable to the City Solicitor which and shall provide that Indemnitor shall be liable for, and the Indemnitors shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of any work associated with the facilities (including but not limited to installation, operation, relocation, replacement or removal) or permits issued to Indemnitor for work in the public rights of way performed by them, or on their behalf, or to cure an act or omission of the Indemnitors or persons acting on their behalf. This indemnity may be included as part of an authorization, and if included, shall be deemed a condition of any work performed in the public rights of way. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made as set forth herein; then upon demand by the City, the Indemnitor shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Indemnitor's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Indemnitor's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Indemnitor's counsel inadvisable), such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Indemnitor shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee. Insurance.

## **6.3 Insurance.**

### **6.3.1 Specifications.**



Each occupant shall have and maintain, at its own cost and expense, Commercial General Liability insurance and Business Automobile Liability (owned, non-owned and hired auto) insurance, taking effect within sixty (60) days of the adoption of these regulations or, if later, the first date any work commences in the public rights of way in connection with work associated with a wireless telecommunications facility, and naming as additional insureds the City, its officers, agents, employees, and independent contractors, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence (combined single limit), for bodily injury, death and property damage, including contractual liability, personal injury and products-completed operations. The policy or policies providing such insurance shall be issued by a company or companies duly permitted to do business in the State of Delaware and carrying a rating by Best's of not less than A-M. The foregoing minimum coverage shall not prohibit the occupant from obtaining a liability insurance policy or policies with coverage in excess of such minimum, and if the occupant maintains coverage higher than the minimum, the City requires and is entitled to coverage afforded by such higher limits. The occupant shall provide to the City a certificate or certificates of insurance evidencing all coverages required under these regulations prior to undertaking, or causing anyone else to undertake any work on its behalf. The occupant shall supply to the City a copy of the applicable insurance policy or policies upon the City's request. If the permittee and occupant are not identical, permittee must also have insurance in the amounts specified above, and comply with the requirements of this Section, unless the occupant shows, to the City's satisfaction, that its insurance covers all acts and omissions of the permittee in connection with work under a permit, without exception.

An occupant or permittee may maintain the insurance coverage required herein by blanket and/or umbrella policies issued to it, so long as such policies have the effect of providing the same coverage required under these regulations.

Occupants and permittees shall also maintain worker's compensation insurance for employees in an unlimited amount as required by Delaware law and employer's liability coverage in the amount of no less than One Million (\$1,000,000.00).

The liability of the occupants and permittees to the City or any other person shall not be limited by said insurance policy or policies, or by the recovery of any amounts thereunder.

If a form of insurance coverage required to be maintained under these regulations is no longer commonly carried by insurers, then such requirement shall be deemed to refer to the closest equivalent commonly carried by insurers.

### **6.3.2 Maintenance of coverage.**

The permittee, if not identical to the occupant, and if required to obtain insurance under Section 6.3.1 shall maintain insurance in force until completion of the work for which a permit was issued (and any guarantee or maintenance period). Occupant shall continuously maintain in force an insurance policy meeting the requirements hereof until completion of removal of the wireless telecommunications facilities to the extent such removal is required under these regulations, and until restoration (and any guarantee and maintenance period) are completed. Each insurance policy shall contain an endorsement that the policy may not be canceled or not renewed until thirty (30) business days after receipt by the City of a written notice of such intent to cancel or not to renew. Within fifteen (15) days after receipt by the City of any said notice, the insured shall obtain and furnish to the City a certificate of insurance evidencing a replacement insurance policy consistent with the terms of these regulations, together with evidence demonstrating that the premiums for such insurance have been paid.

### **6.3.3 Insurance waiver.**

City may waive the insurance requirements of this Section for an occupant if the only facilities that the occupant owns in the rights-of-way are within a wireless telecommunications facility for which there is a designee as described in Section 5.10, and where the designee maintains insurance that covers the entirety of the wireless telecommunications facility, including portions it does not own, and the designee's insurance otherwise satisfies the requirements of this Section. The waiver terminates automatically if the occupant places other facilities, wired or wireless, within the rights of way, or if the designee's insurance no longer satisfies the requirements of this Section 6.3.

## **7. REQUIREMENTS AND PROCEDURES FOR PLACEMENT OF WIRELESS TELECOMMUNICATIONS FACILITIES ON STREET LIGHTS OR TRAFFIC SIGNALS**

### **7.1 Additional Definitions.**

#### **7.1.1 Applicant.**

Applicant in this Section 7 refers to the persons who seek to enter into agreements for the use of a TSP or SLP

#### **7.1.2 Licensee.**

Licensee is used to refer to a person who leases, licenses or obtains the consent of the City to use a TSP or SLP.

### **7.1.3 TSP.**

Traffic signal poles owned by the City, and which the City is permitted to modify or replace and permit a third party to use.

### **7.1.4 SLP.**

A dedicated street light pole owned or under the control of the City which the City is permitted to modify and permit a third party to use. A street light mounted on a utility pole is not an SLP.

## **7.2 Goals.**

The City has determined that it wishes to make certain TSPs and SLPs under its ownership or control available for placement of wireless telecommunications facilities for the purpose of providing personal wireless services. No person may use any TSP or SLP without entering into an agreement with the City. The City reserves the right to vary from these standard conditions as are in its best interests, and by making them available generally, is not guaranteeing that it will lease any particular TSP or SLP to any person, and is not undertaking a utility or common carrier obligation to make the facilities available for use. However, it wishes to publicly specify certain of the standard conditions and the processes it will use in leasing or licensing TSPs or SLPs it will own or control, but reserve the right to include additional or different conditions in any agreement regarding the use of its facilities. Even so, the specification of these standards is not an offer, and these standards, may be changed at any time, and create no rights in any person. The City may choose to make the TSPs or SLPs available to entities that do not provide personal wireless services, but may seek additional terms and conditions to ensure that the City's interests are served.

Agreements will generally take the form of Master License Agreements, with addenda identifying each TSP or SLP that a Licensee uses, and the approved design for that TSP or SLP, which shall be in the form of technical drawings and accurate photo-simulations. The design may not be altered without an amendment to the contract, consented to in writing by the City. If there is a conflict between the drawings and the photo-simulations, the City may require a Licensee to conform to the design it deems in the City's best interest.

The City, acting in its proprietary capacity as the owner or entity in control of a SLP or TSP, will only approve applications to install wireless telecommunications facilities in appropriate locations, after considering factors appropriate to that capacity, including but not limited to the impact of the installation on its use of the structures, and the effect of the installation on design standards it may have adopted consistent with plans for development in particular areas.

An SLP in the public rights of way owned by a utility is typically controlled by the City, and a wireless telecommunications facility cannot be placed on those poles without a contract with the City, but also requires a contract with the utility. The City's consent (except as to compensation terms) will generally be subject to the terms and conditions that apply to SLPs the City owns. The consents and the Master Agreements are collectively referred to as "licenses" below.

### **7.3 Types of Licenses.**

There may be two types of licenses into which the City will enter (collectively referred to as Licenses except when context requires otherwise):

**7.3.1** A license authorizing modification or replacement of an SLP which the City does not own, but which is under its control. The contracts will require that ownership of the SLP remain with the electric utility from which the City obtains street lighting, unless ownership is transferred, and the City accepts ownership of the SLP. The City may charge a fee for its consent, but rents will be paid to the owner of the SLP; or

**7.3.2** A license authorizing modification or replacement of an SLP or TSP which the City owns. The City may charge rents for use of these SLPs or TSPs.

### **7.4 What SLPs and TSPs Will Be Available and to Whom.**

The City will only consider requests for use from persons who intend to utilize the TSPs or SLPs for placement of a base station which that person will operate, and for which that person will be wholly responsible. A Licensee must also have the necessary authority from the City to occupy the public rights of way, in the form of a license, franchise or consent. The City may, at its option, require every person who will own any part of the base station (other than the TSP or SLP, if owned by the City or by an electric utility) to be a Licensee, and will limit the right of any Licensee to sublease the TSP or SLP, without appropriate guarantees and protections that satisfactory to the City Solicitor.

### **7.5 Submission.**

A person who wishes to enter into a Master License Agreement, or to obtain an authorization to place a wireless telecommunications facility on a particular TSP or SLP should submit a request to Department of Public Works Transportation Division, which request should be from the person that seeks to be the Licensee, describe the facilities that are to be installed, and include an agreement to pay costs and the fee required.

### **7.6 Compensation.**

**7.6.1** An Applicant must agree to pay the City's actual costs in developing a license and coordinating all necessary contracts, and an additional fee to cover the City's actual costs in reviewing an application for use of any particular TSP or SLP, and of conducting an inspection of the wireless telecommunications facilities and other facilities affected by its installation. An initial deposit of \$1,500 must be submitted to the City for development of the license, and a fee of \$500 for each TSP and SLP that the Applicant seeks to use. A monthly rent shall be applied to all Licensees. Rents are intended to reflect the fair value of the TSP and SLPs leased or licensed, and may be in cash or in kind. The City may waive or reduce fees where the Applicant shows that the placement will result in service improvements to low-income areas within the City. The City may permit payment of an alternative amount for a temporary period while the validity of any rent is being challenged, provided that the City has adequate security that the full rent to which it may be entitled is paid for the entire period the use of a TSP or SLP is reserved for any person.

**7.6.2** Every license shall require the Licensee to pay any additional costs that the City may incur as a result of the use or application for use of a TSP or SLP by the Licensee or its customers. Without limitation, that includes: additional electrical bills that the City may incur if, by way of example and not limitation, use by the TSP or SLP affects the amount the City must pay for power; any and all costs associated with removing and replacing an SLP or TSP to accommodate a Licensee's facilities (including costs associated with reinforcing structures and with installation, removal, and modification of foundations); and costs of restoring the SLP and TSP to its original condition upon termination of the license. By way of example and not limitation, if replacement of an SLP involves installation of a structure that costs additional amounts to remove, restore or repair, or that requires additional or different equipment to remove or repair, the Licensee shall be required to bear all costs therefore

## **7.7 Use Secondary.**

**7.7.1** It shall be a condition of each license that a Licensee's use shall be secondary to the use by the City, and may not interfere with, or disrupt any current or future use by the City. The City may terminate any license and direct removal of all portions of the base station, and any meters or other electrical wiring serving the base station if the use does cause such interference or disruption, or if it will result in costs to the City for which the City may not be fully compensated, or if it may create additional liabilities to third parties.

**7.7.2** The Licensee must move, remove, and relocate its facilities as necessary and in accordance with a timetable directed by the City where the

City desires to repair, move or replace, or is required to repair, move or replace a SLP or TSP, and that work requires or will be advanced by movement, removal or relocation of the wireless telecommunications facilities. The City may terminate a license, and cause removal of all portions of the base station, and any meters or other electrical wiring serving the base station if the Licensee fails to move, remove or relocate in accordance with the City's directives. The City may charge the Licensee the costs that it incurs in connection with the performance of the work.

## **7.8 Quality of Work on City Property, Consistency with City Use.**

All work related to the wireless telecommunications facilities shall be performed in a safe, thorough and reliable manner, in compliance with these regulations and all applicable laws and standards, using materials of good and durable quality, and in a manner and using materials consistent with the City's use of the SLPs and TSPs. If, at any time, it is reasonably determined by the City or any other governmental agency or authority of competent jurisdiction that any part of the wireless telecommunications facilities is harmful to the public health or safety, then the Applicant shall, at its own cost and expense promptly correct any and all such harmful conditions.

## **7.9 Duration of License.**

A license may be for a period of no less than five (5) and no more than ten (10) years, based on the City's evaluation of its interests in the structure. At the end of the term, the City may extend the license after considering whether the design of the wireless telecommunications facility should be changed, or additional conditions imposed, based on updated technology or other relevant and applicable changes in the area where the facility is located.

## **7.10 Ongoing Maintenance.**

Where a SLP or TSP is not replaced, the Licensee is responsible for paying for the maintenance of the portions of the base station it owns or controls, and any additional maintenance or inspection costs the City may incur as a result of the Licensee's use of the SLP or TSP. Where the City authorizes a replacement SLP or TSP, Licensee additionally may be required to bear all costs associated with maintenance of the replacement structure, not including the traffic signals, luminaires, monitors and control equipment and similar equipment of the City. It is the preference of the City that any maintenance be performed by the electric utility that serves the SLP; but in any event, any maintenance must be performed by qualified contractors approved by the City or by the City itself.

## **7.11 Installation Options.**

For City-owned TSPs or SLPs, where the SLP or TSP must be modified or replaced in preparation for the installation of the wireless telecommunications facility, the City may in its discretion either give the Licensee the option of performing any necessary work itself or through the use of qualified contractors authorized by the City, or the City may perform any necessary work itself, and charge the Licensee for actual costs.

## **7.12 Maintenance Obligations.**

The City will not be responsible for maintenance of the Licensee's equipment. The City Department of Public Works must receive a minimum of three (3) days' notice before the Applicant performs any work on an SLP or TSP.

Where an SLP or TSP falls, or there is an imminent risk of failure, or an emergency where the SLP, TSP or Licensee's facilities create a hazard to persons or property, the Licensee must promptly disconnect, remove or relocate its base station as necessary to permit restoration of the SLP or TSP, and if it fails to do so, the City may disconnect, remove or relocate the base station, at the Licensee's expense. Upon completion of any repair work at that location, it will be the responsibility of the Licensee to reinstall the base station equipment or notify the City of its intent not to reinstall.

The Licensee must maintain its wireless telecommunications facilities, or alter those facilities as necessary to avoid interference with the use of the SLP or TSP by the City.

It is the Licensee's responsibility to maintain electric service to the Licensee's equipment. Except as the City may otherwise agree, if the electric utility offers a flat rate for service to the wireless telecommunications facilities, that rate should be used to avoid the need for a meter.

Each license must specify a telephone number and email address through which the City may contact the Licensee at all times to require the removal, relocation or disconnection of the base station equipment.

## **7.13 Design of Facilities.**

**7.13.1** The City may approve a design for use at one or more specified locations, or for a class of locations, which design shall be treated as an addendum to the license, and which will not be subject to changes without the City's written consent.

**7.13.2** Designs must be consistent with the corridor within which the wireless telecommunications facility will be placed, and should be such that there is a consistency in the appearance of the SLPs or TSPs, and so that there is no adverse impact on their primary functions.



**7.13.3** As a general matter, and where consistent with the foregoing, the City will require placement of the base station within the TSP and SLP, to the extent possible. Otherwise, in reviewing designs, the City will use as guidance standards set forth in Section 3.3 for safe harbor facilities.

**7.13.4** Base station equipment must be designed so that power usage by the base station can be shut off remotely, or from the base of the TSP or SLP. The Licensee shall install an equipment power cut-off switch as directed by the City for every SLP or TSP to which Licensee has attached a base station. The City will specify instances where these power cut-off facilities and associated equipment need to be pad-mounted. In ordinary circumstances, the City's authorized field personnel will contact the Licensee's designated point of contact to inform the Licensee of the need for a temporary power shut-down and the time by which the base station equipment must be powered down, which time shall be at least twenty-four (24) hours after notice is given. The Licensee will power down its antenna remotely, at the time specified, and will not power up until the Licensee receives notice from the City that the base station equipment may be powered up, which the City shall do promptly after completing activities which required the power down. Provided, however, that in the event of an emergency, the power down will be with such advance notice as may be practicable and, if circumstances warrant, employees and contractors of the City may accomplish the power down by operation of the power disconnect switch without advance notice to the Licensee and shall notify the Licensee soon as possible. In all such instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power down shall restore power and inform the Company as soon as possible that power has been restored.

**7.13.5** Backup power sources shall not be permitted unless such sources comply with the requirements in these regulations, including requirements with respect to toxic materials.

**7.13.6** Generally, the City will not approve designs that increase the height of the SLP or TSP by more than five feet.

**7.13.7** As part of the installation of a base station on a SLP or replacement SLP, the City may require the Licensee to install a luminaire of the City's designation, at the Licensee's expense.

## **7.14 Base Station Location Requirements:**

**7.14.1** No more than one wireless telecommunications facility will be licensed on any TSP or SLP such that once an SLP becomes a reserved pole, such SLP is not available for use by any other SLP Applicant as long as such SLP remains a reserved pole. A single wireless telecommunications facility may

be a “neutral host” facility that can accommodate more than one provider of personal wireless services, but the wireless telecommunications facility (excluding the supporting structure) must be under the sole control of the “neutral host.”

**7.14.2** Due to City operational needs, TSPs on which a traffic signal controller equipment box is located (usually one pole per intersection with a traffic light) are not available for use for base stations.

**7.14.3** Base station installations will only be permitted on TSPs that support a signal “arm” reaching into the roadbed, except that if at an intersection there are no TSPs with such a signal arm, then up to two TSPs without signal arms may be used for base stations at such intersection.

## **7.15 Replacement of City SLP.**

The City shall only permit an Applicant to replace an SLP when the Applicant:

**7.15.1** Demonstrates that the replacement is necessary to support the proposed wireless telecommunications facility; and

**7.15.2** Demonstrates that the replacement pole’s height (if different from that of the pole being replaced) is the shortest necessary to achieve the operational goals for the wireless telecommunications facility.

## **7.16 Security and Indemnities.**

Each license must contain indemnity and insurance requirements satisfactory to the City Solicitor that survive the termination of the license through the removal of the wireless telecommunications facility, and the restoration or affected facilities. Under no circumstances will the City provide a cross-indemnity.

## **7.17 No Guarantee of Suitability of Use.**

Entry into a license, or approval or a placement upon a specific TSP or SLP is not a guarantee by the City that the SLP or TSP is suitable for use, or will remain suitable for use for the wireless telecommunications facility.

## **7.18 Access to Books and Records; Report.**

The City shall have the right to oversee, regulate and inspect the installation, construction and maintenance of the wireless telecommunications facilities, and any part thereof, to ensure compliance with the license, and applicable regulations and requirements.

Upon request, the Occupant or Designee as defined in section 5.10 will produce promptly books and records relevant to compliance with the same to the City at the City for inspection and copying. Such records may be in electronic form.

Generally, production must occur within thirty (30) days after a request except where conditions may require a more rapid response. The City will not unreasonably refuse to extend the time for response if the nature of the request is such that response within thirty (30) days would be unduly burdensome.

The Occupant or Designee as defined in section 5.10 shall maintain its facilities in conformance with applicable Federal, State, and Local laws and, upon receipt of written request from the City's Small Cell Coordinator, the Occupant or Designee will prepare a written report demonstrating its compliance with the conditions of the installation, including its compliance with FCC RF regulations.

## **7.19 Termination.**

Wireless telecommunications facilities must be removed from the TSP or SLP at the expiration or earlier termination of the license, or if base station equipment is abandoned. Base station equipment is deemed abandoned if not being used for the provision of personal wireless services for a period of 6 months.

If the Licensee fails to comply with a license, permit, or applicable laws and standards the City may notify the Licensee of the deficiency, and if the deficiency is not cured within 30 (thirty) days, may terminate the license and direct removal of all portions of the base station, and any meters or other electrical wiring serving the base station.

If wireless telecommunications facilities are not removed and the affected property restored within a reasonable period of time, which time shall be thirty (30) days unless otherwise agreed, the City may cause the work to be performed and charge Licensee for all costs incurred by it thereby.

As part of any removal, the Licensee must restore the TSP or SLP to its prior condition in all respects (including removing and replacing the foundations), except as the City may otherwise direct. If the Licensee fails to remove and restore, the City may do so, and charge the Licensee all costs it incurs thereby,

## **7.20 Allocation of Available City-Owned Pole Sites Among Multiple Potential Applicants**

**7.20.1** City has a limited number of SLPs and TSPs that may be useable for placement of base stations. The City will determine with whom it wishes to negotiate, based on its assessment of its best interests, and its obligations under state law.

**7.20.2** Generally, the City will negotiate with Applicants for use of SLPs and TSPs on a first-come, first served basis, except applications received by the close of business on the same date, which will be treated as received at the same time. The City will specify the first date applications may be submitted under this process. Applications submitted before that date, other than those on which final action has been taken granting the application, will (for purposes of this section be treated as received on the first date applications can be received.

**7.20.3** To be eligible to submit a request for use of an SLP or TSP, an Applicant and application must satisfy these regulations, either have an authorization, or agree to enter into an authorization with the City, and have or agree to enter into an appropriate Master License Agreement with the City.

**7.20.4** Applications must be complete, and must be accompanied by all required fees, and an agreement to pay costs as provided under these regulations.

**7.20.5** For each SLP or TSP and Applicant proposes to use, the application should include:

**7.20.5.1** The design that the Applicant proposes and what modifications or replacements will be required for the existing SLP or TSP;

**7.20.5.2** Proposed physical connection methods at the pole to utilities for power and backhaul (e.g., connection within a pole hand hole, external disconnect, etc.);

**7.20.5.3** Detail of how the proposed construction will meet limitations on ground-mounted cabinets or equipment and other streetscape limitations included in these regulations;

**7.20.5.4** Whether the facility will utilize FCC-licensed frequencies, and if it will, proof of the relevant license(s);

**7.20.5.5** Whether the facility will satisfy a requirement for personal wireless services, and if so proof that there is a plan for use of the facility;

**7.20.5.6** An Engineer's report meeting the requirements of Section 3.7;

**7.20.5.7** A statement describing the benefits to the City of approving the Application.

**7.20.6** If the City determines that the Applicant is proposing a wireless telecommunications facility that may be appropriate for placement on an SLP or TSP, it will reserve the pole for the Applicant's use, pending completion of a Master License Agreement and a franchise (if needed), and notify the Applicant of the reservation. Otherwise, it will notify the Applicant of the denial of the reservation.

**7.20.7** Within sixty (60) days of notice from the City that it will consider the application, the Applicant must agree to the terms of a Master License Agreement with the City, and an authorization, if required.

**7.20.8** Within thirty (30) days of the date of the application, or the date the Applicant enters into the Master License Agreement or franchise, whichever is later, the Applicant and the City must agree upon a design addendum specifying what attachments or replacements will be permitted on the reserved pole. All applicable fees would be due and owing upon execution of that addendum for each pole or alternative location. As part of this process, the City shall require appropriate engineering certifications that the installation can be performed consistent with these regulations, and without creating a hazard to persons or property, or interfering with the effective operation of the SLP or TSP.

**7.20.9** The Applicant must complete construction on a reserved structure location within one (1) year of approval of the addendum.

**7.20.10** A reservation may be terminated if an Applicant fails to satisfy any deadlines specified above (unless the City waives the same); if the Applicant's franchise expires or is terminated; or if the Applicant is failing to comply with requirements of these regulations, or other applicable requirements; or the license terminates by passage of time or otherwise.

**7.20.11** Reservations and cancellation of reservations shall be public information.