



Select Board Meeting
Monday, January 27, 2025
Select Board Room, Town Offices
36 Bartlet Street Andover, MA 01810

7:00 PM

- I. Call to Order – 7:00 P.M.
- II. Opening Ceremonies
 - A. Moment of Silence/Pledge of Allegiance
- III. Town Manager Report
 - a. Solid Waste Update
- IV. Communications/Announcements/Liaison Reports
- V. Public Comment
- VI. Public Hearings
 - A. National Grid – Teaberry Lane and Ballardvale Road
Board to review and consider voting to approve an application from National Grid requesting permission to construct a line of underground electric conduits, including the necessary sustaining, and protecting fixtures, under and across Teaberry Lane and Ballardvale Road.
- VII. Regular Business
 - A. Alcoholic Beverages License – Event on Town Owned Property
Board to consider voting to approve an application from Oak & Iron Brewing Co, at 18 Red Spring Road, Andover, for a Wine and Malt One-Day Liquor License for use on Town property for Winterfest on February 2, 2025 under Select Board Liquor Regulations Section XI.2.N “Special One-Day Alcohol License Policy & Application for Outdoor Events on Town-owned Property.”
 - B. Shawsheen School Update
Board to receive an update on the interim reuse plan for the Shawsheen School from the Town Manager and Director of Recreation.
 - C. Bald Hill-Wood Hill Reservation
Board to receive an update on the forestry plan for Bald Hill-Wood Hill Reservation.
 - D. Select Board Policy Review
Board to review and consider voting to approve the amended Personal Wireless Service Facilities Policy (2nd Reading).

RECEIVED
TOWN OF ANDOVER, MASS
2025 JAN 29 PM 2:45

VIII. Approval of Minutes

A. Board to approve minutes from the following meetings:

1. January 14, 2025 Select Board

IX. Executive Session

A. Board to vote to go into Executive Session pursuant Purpose 7, to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements (the Open Meeting Law) to vote to approve and release or not release executive session minutes of October 29, 2024 (Subcommittee and entire Select Board), November 25, 2024 and December 16, 2024; and not to return to open session.

X. Adjourn

Summary of Town Manager Staff Appointments

The Town Manager is pleased to announce the following appointments:

Department	Name	Position	Rate/Term	Date of Hire
Public Works	Raynna Collier	Water Treatment Plant Intern	\$18.00/hour	01/13/2025

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Amy Heidebrecht in the Town Manager's Office at 978-623-8213 or by email at amy.heidebrecht@andoverma.us

MEETINGS ARE TELEVISED ON
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45



TOWN OF ANDOVER

Town Clerk's Office
36 Bartlet Street
Andover, MA 01810
978-623-8230
www.andoverma.gov

NOTICE

You are hereby notified that a Public Hearing will be held by the Andover Select Board on January 27th, 2025 in the 3rd Floor Select Board Room, 36 Bartlet Street, at 7PM.

This hearing is being held on the petition of National Grid requesting permission to excavate the public highways to construct and maintain a line of underground electric conduits, including the necessary sustaining and protecting fixtures, under and across the public way or ways hereinafter named in accordance with the plan filed herewith marked – “Teaberry Lane/Ballardvale Road – Andover, Massachusetts”:

#31028664 – Teaberry Lane/Ballardvale Road - National Grid will install underground facilities on Teaberry Lane/Ballardvale Road beginning at a point approximately 100 feet North of the centerline of the intersection of Teaberry Lane/Ballardvale Road and continuing approximately 650 feet in a North direction. National Grid is petitioning to replace damaged primary with approx. 800' of 2-3" PVC conduit and #2 SAL primary from P2467 to PAD 2-1. There will be a new customer installed pullbox approx. 100' North from P2467 and approx. 700' North from P2467, Andover, MA.

If you would like to obtain a copy of the plan(s) of the proposed work related to this utility petition, please email the Town Clerk's office at townclerk@andoverma.gov.

Representatives from the utility company will present their petition during the meeting and will also be available at 6:45 P.M. on the above date to answer questions you may have relating to the proposed work.

By order of the
Select Board

Austin Simko
Deputy Town Manager/Town Clerk

Plan No.: 31028664
Date: January 16, 2025

TOWN OF ANDOVER, MASSACHUSETTS



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TOWN CLERK'S OFFICE
2024 DEC 18 PM 1:03
TOWN OF ANDOVER, MA

PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: NATIONAL GRID # 31028664

PROJECT MANAGER NAME: CHRIS WELLINGTON

PROJECT MANAGER CONTACT NUMBER: 978-360-6460

LIST OF ADDRESSES IMPACTED BY PROPOSED WORK:
1-15, Except House 13,14 (Teaberry Lane, Andover MA)

PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL

PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

DPW

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

POLICE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

FIRE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

nationalgrid

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TOWN CLERK'S OFFICE
2024 DEC 18 PM 1:04
TOWN OF ANDOVER, MA

December 18, 2024

The Board of Selectmen of Andover, Massachusetts

To Whom It May Concern:

Enclosed please find a petition of NATIONAL GRID covering the installation of underground facilities.

If you have any questions regarding this permit, please contact:

Osaheni Aimuanwosa (781) 922-6261 or Osaheni.aimuanwosa@nationalgrid.com

Please notify National Grid's Jenn Iannalfo of the hearing date / time to Jennifer.Iannalfo@nationalgrid.com

If this petition meets with your approval, please return an executed copy to:

National Grid: Jennifer Iannalfo; 1101 Turnpike Street; North Andover, MA 01845.

Very truly yours,

Dave Johnson

Dave Johnson
Supervisor, Distribution Design

Enclosures

RECEIVED
TOWN CLERK'S OFFICE
2024 DEC 18 PM 1:04
TOWN OF ANDOVER, MA

Questions contact – Osaheni Aimuanwosa (781) 922-6261 or
Osaheni.aimuanwosa@nationalgrid.com

Petition of the Massachusetts Electric Company d/b/a NATIONAL GRID
OF NORTH ANDOVER, MASSACHUSETTS
For Electric Conduit Location:

To the Board of Selectmen of Andover, Massachusetts

Respectfully represents the Massachusetts Electric Company d/b/a NATIONAL GRID of North Andover, Massachusetts, that it desires to construct a line of underground electric conduits, including the necessary sustaining and protecting fixtures, under and across the public way or ways hereinafter named.

Wherefore it prays that after due notice and hearing as provided by law, it be granted permission to excavate the public highways and to run and maintain underground electric conduits, together with such sustaining and protecting fixtures as it may find necessary for the transmission of electricity, said underground conduits to be located substantially in accordance with the plan filed herewith marked – Teaberry Lane/Ballardvale Road - Andover, Massachusetts.

The following are the streets and highways referred to:

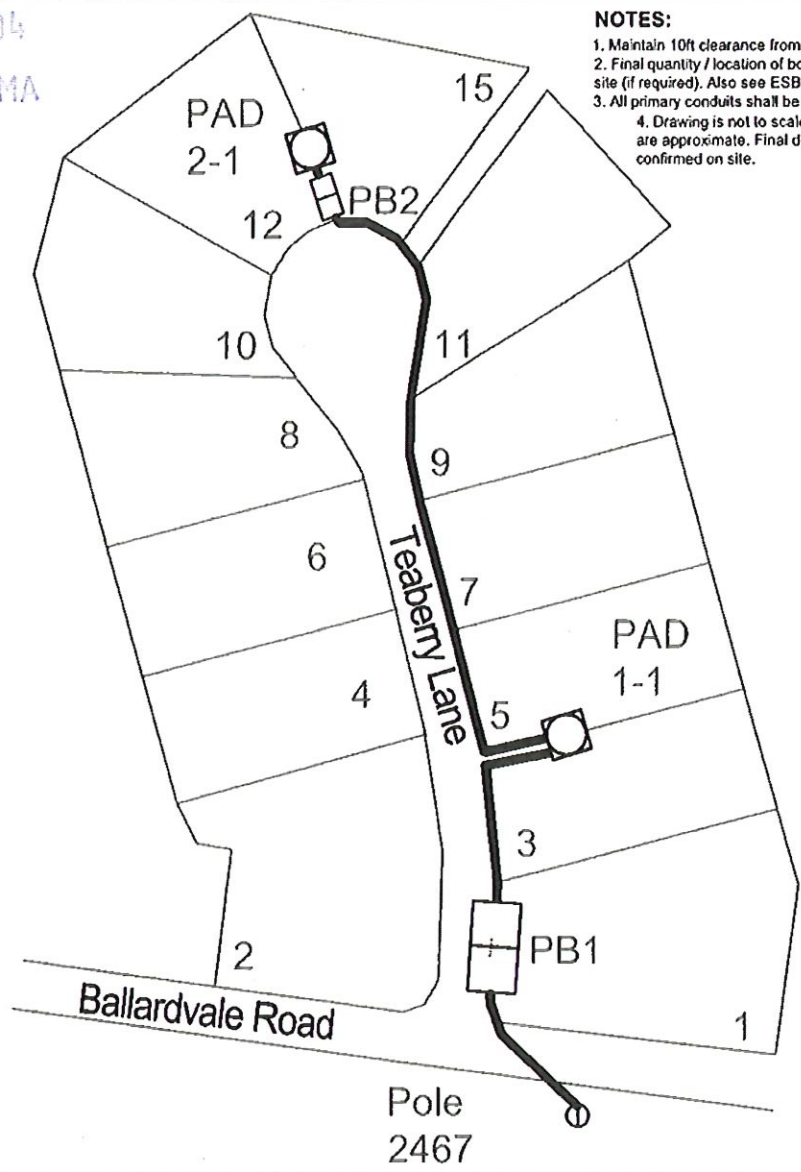
No.# 31028664

Teaberry Lane/Ballardvale Road - National Grid will install underground facilities on Teaberry Lane/Ballardvale Road beginning at a point approximately 100 feet North of the centerline of the intersection of Teaberry Lane/Ballardvale Road and continuing approximately 650 feet in a North direction. National Grid is petitioning to replace damaged primary with approx. 800' of 2-3" PVC conduit and #2 SAL primary from P2467 to PAD 2-1. There will be a new customer installed pullbox approx. 100' North from P2467 and approx. 700' North from P2467, Andover, MA.

Location approximately as shown on plan attached.

Massachusetts Electric Company d/b/a
NATIONAL GRID *Dave Johnson*
BY _____
Engineering Department

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2025 DEC 18 PM 1:04
TOWN OF ANDOVER, MA



- NOTES:**
1. Maintain 10ft clearance from front of Transformer.
 2. Final quantity / location of bollards to be defined on site (if required). Also see ESB 759B.
 3. All primary conduits shall be encased in concrete.
 4. Drawing is not to scale. Distances are approximate. Final dimensions to be confirmed on site.

WR #: 31028664

UNDERGROUND PETITION

nationalgrid

- ⓪ EXISTING POLE
- Ⓛ PROPOSED CONDUIT 2 - 3"
- Ⓚ EXISTING PAD
- Ⓜ PROPOSED PULLBOX

Date: 8-23-2024

Job description:
NGRID is petitioning to Install approx. 800' of 2-3" secondary duct from existing pole 2467 on Ballardvale RD to pad 2-1 within Teaberry Lane, Andover

WORK REQUEST: # 31028664

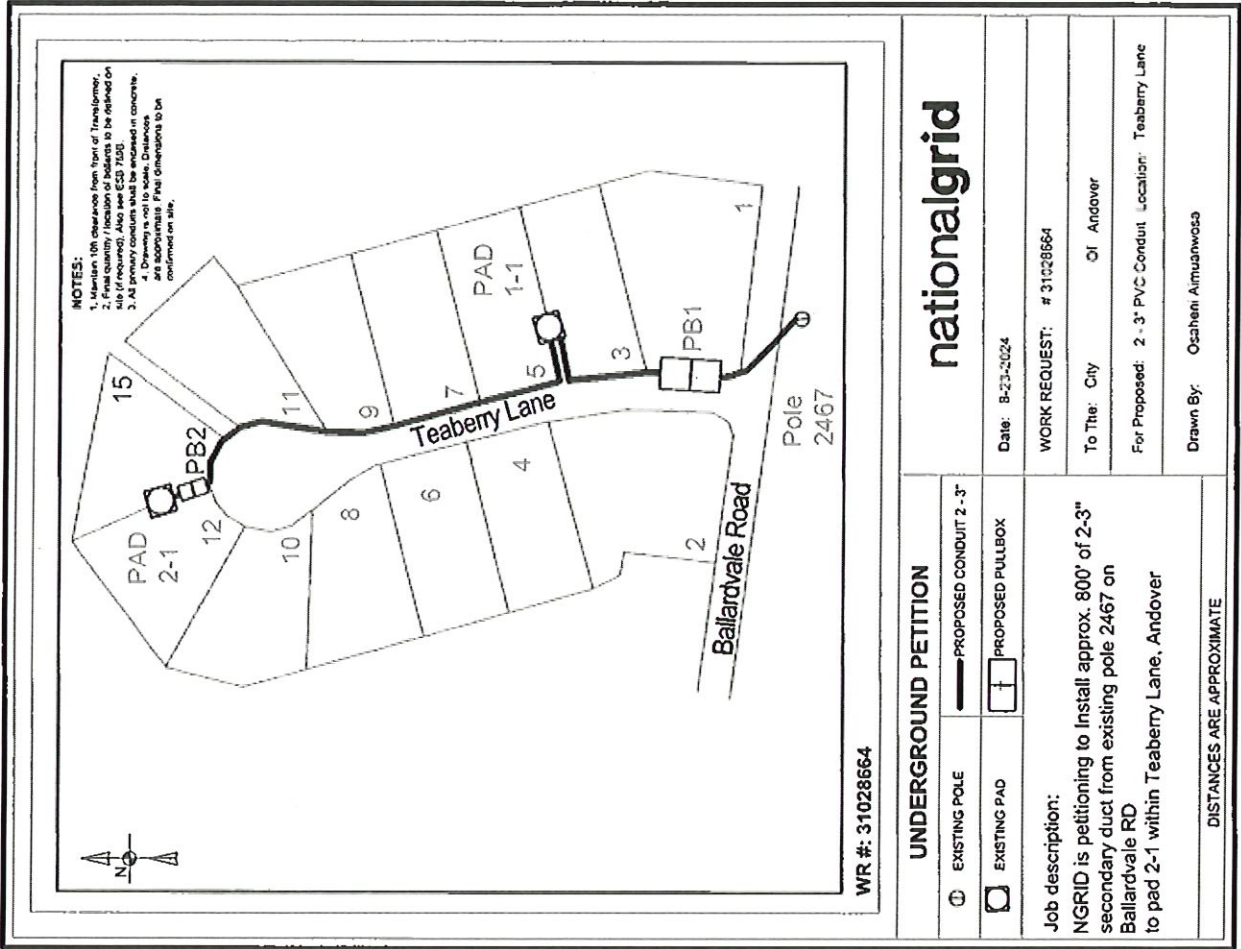
To The: City Of Andover

For Proposed: 2 - 3" PVC Conduit Location: Teaberry Lane

Drawn By: Osaheni Aimuanwosa

DISTANCES ARE APPROXIMATE

RECEIVED
 TOWN CLERK'S OFFICE
 2024 DEC 18 PM 1:04
 TOWN OF ANDOVER, MA



nationalgrid

Date: B-23-2024

WORK REQUEST: # 31028664

To The: City Of Andover

For Proposed: 2 - 3" PVC Conduit Location: Teaberry Lane

Drawn By: Ocahen Almuhanwosa

UNDERGROUND PETITION

- EXISTING POLE
- PROPOSED CONDUIT 2 - 3"
- EXISTING PAD
- PROPOSED PULLBOX

Job description:

NGRID is petitioning to install approx. 800' of 2-3" secondary duct from existing pole 2467 on Ballardvale RD to pad 2-1 within Teaberry Lane, Andover

DISTANCES ARE APPROXIMATE

RECEIVED
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2024 DEC 18 PM 1:04
TOWN OF ANDOVER, MA

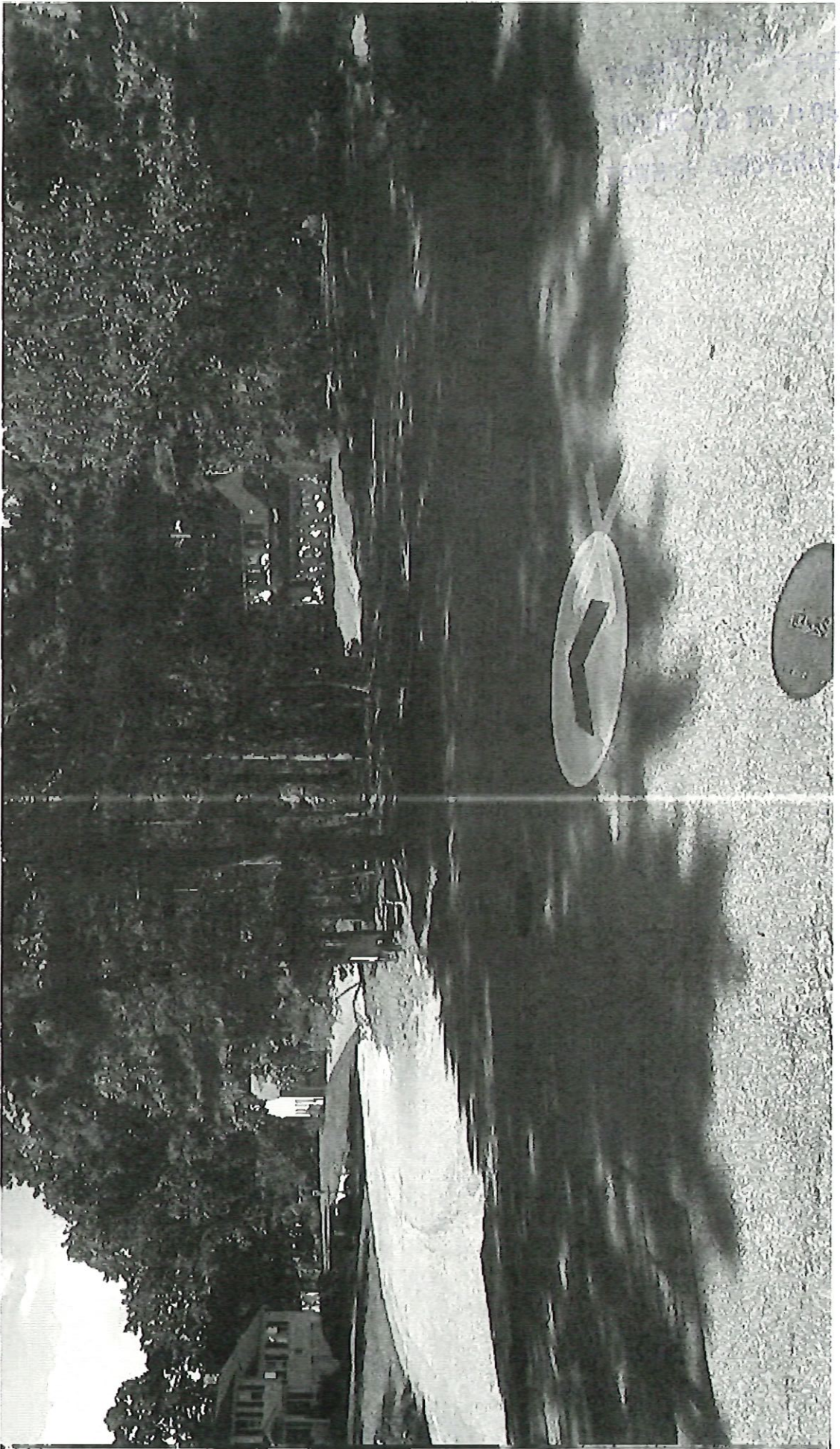


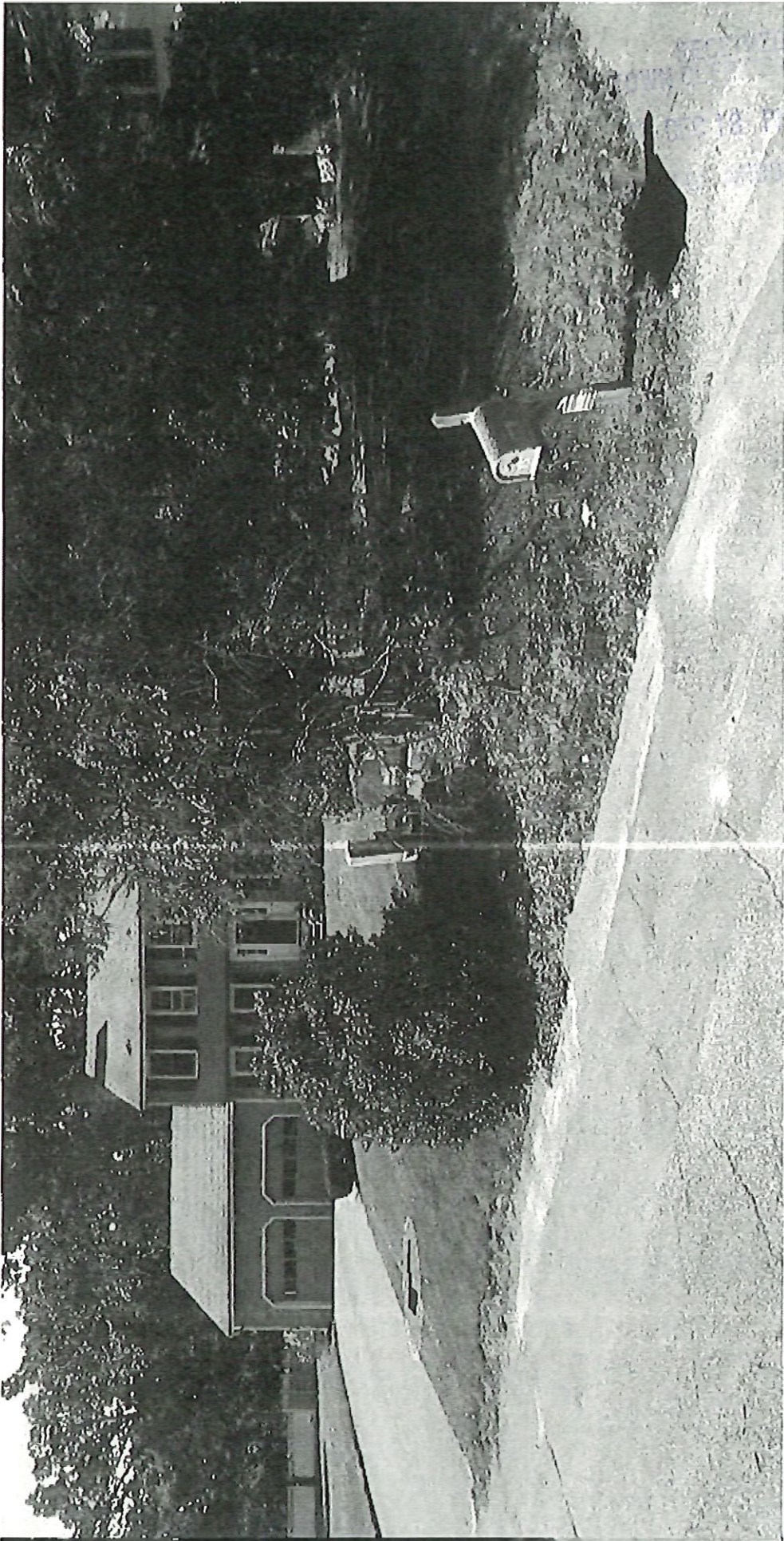
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ED
OFFICE
PN 1: 04
DOVER, MA

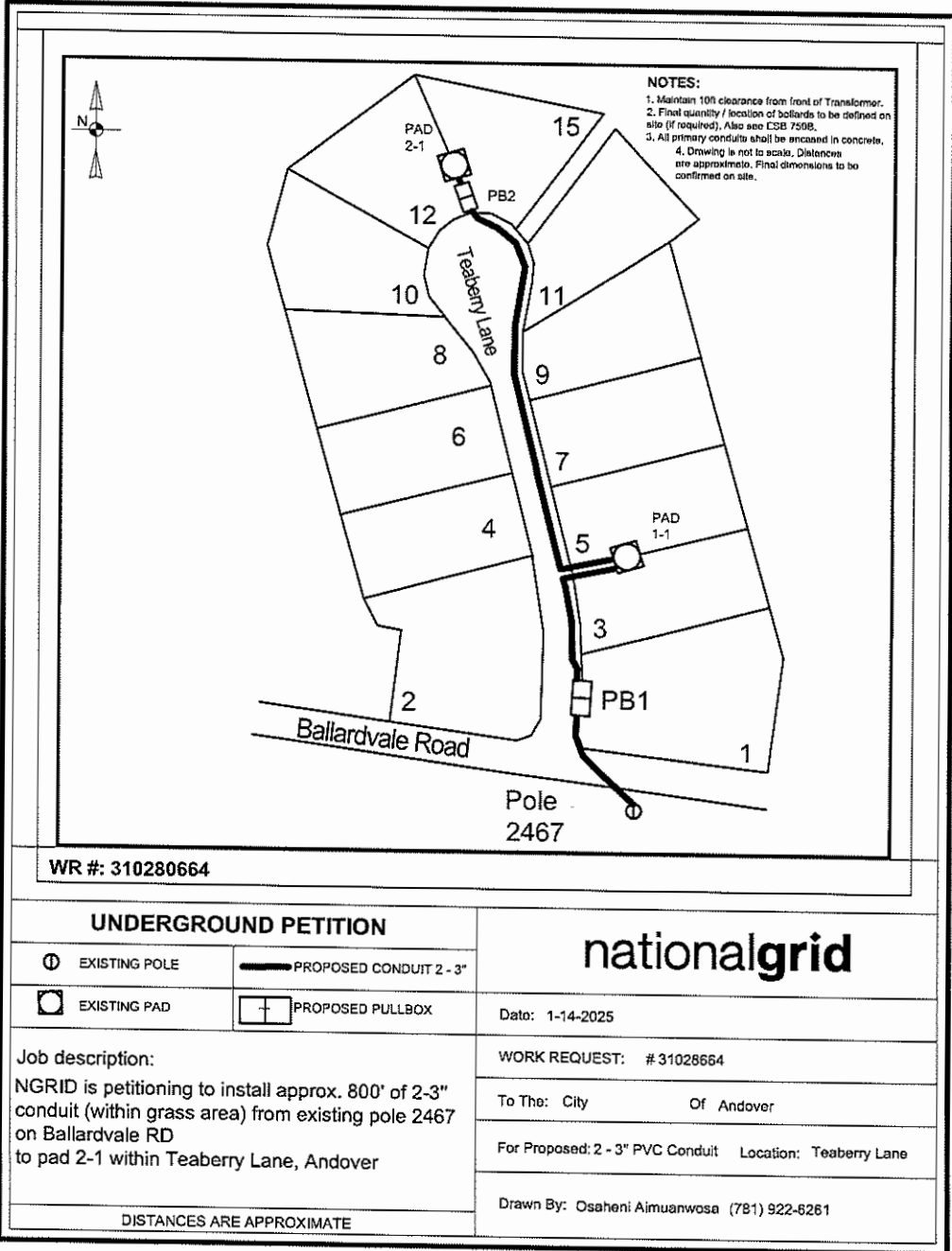






OFFICE
1:06
VER. MA

DATE: 1/14/2025
 TIME: 11:30 AM
 LOCATION: ANDOVER, MA



- NOTES:**
1. Maintain 10ft clearance from front of Transformer.
 2. Final quantity / location of bollards to be defined on site (if required). Also see CSB 750B.
 3. All primary conduits shall be encased in concrete.
 4. Drawing is not to scale. Distances are approximate. Final dimensions to be confirmed on site.

WR #: 310280664

UNDERGROUND PETITION

nationalgrid

⓪ EXISTING POLE	— PROPOSED CONDUIT 2 - 3"
Ⓛ EXISTING PAD	⊕ PROPOSED PULLBOX

Date: 1-14-2025

Job description:
 NGRID is petitioning to install approx. 800' of 2-3" conduit (within grass area) from existing pole 2467 on Ballardvale RD to pad 2-1 within Teaberry Lane, Andover

WORK REQUEST: # 31028664

To The: City Of Andover

For Proposed: 2 - 3" PVC Conduit Location: Teaberry Lane

Drawn By: Osaheni Aimuanwosa (781) 922-8261

DISTANCES ARE APPROXIMATE

DATE: 08/23/2024
 TIME: 11:30 AM
 31028664 08/23/2024

WR# 31028664

P2467 BALLARDVALE RD > PB1 TEABERRY LN > PAD 1-1 > PB2 > PAD 2-1
 FEEDER: 54L3

NGRID SCOPE:

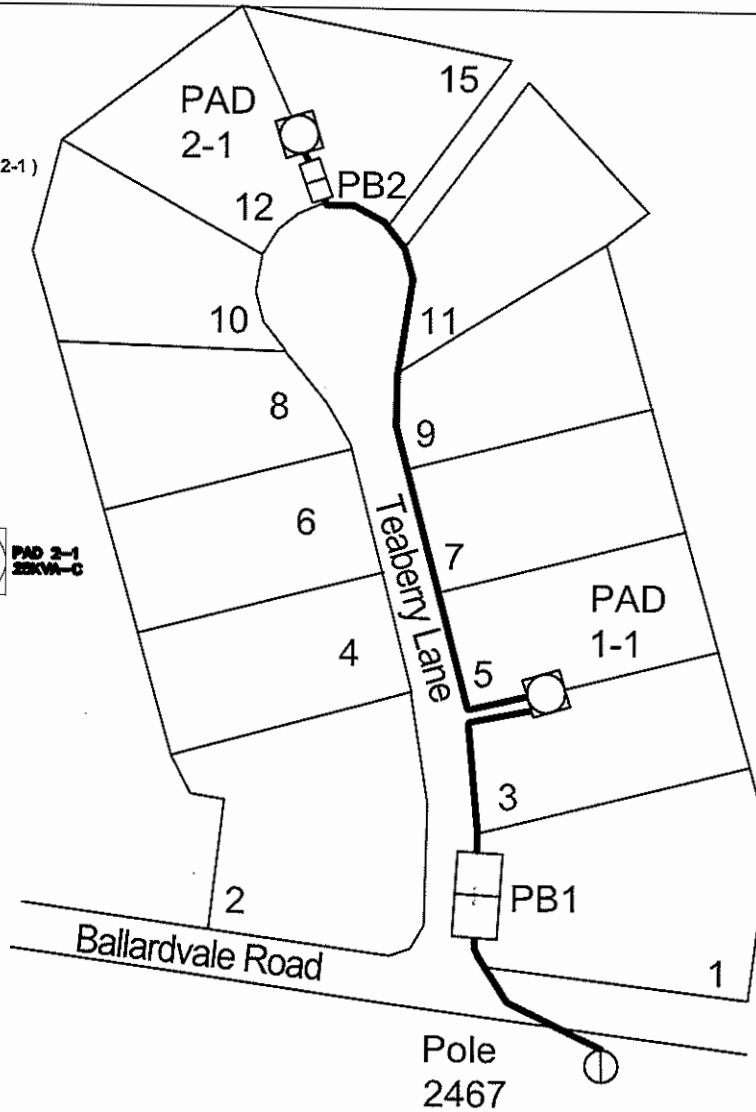
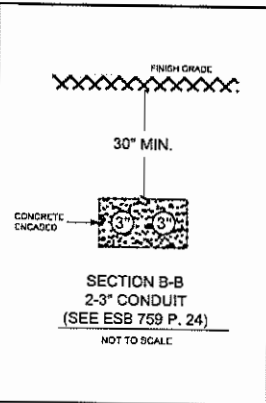
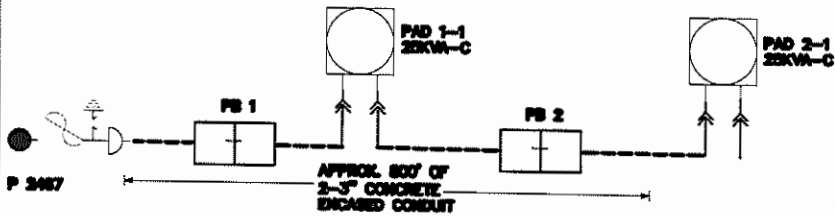
- * PETITION CITY OF ANDOVER TO OPEN ST FOR TRENCH/CONDUIT INSTALLATION
- * INSTALL APPROX. 800' OF 2-3" CONDUIT ON GRASS
- * INSTALL APPROX. 800' OF #2SAL PRIMARY ON GRASS
- (CABLE RUN: P2467 BALLARDVALE RD > PB1 TEABERRY LN > PAD 1-1 > PB2 > PAD 2-1)

CUSTOMER TO DIG TRENCH AND INSTALL:

- * 2 PULLBOXES
- * 2-3" CONDUIT

NGRID DESIGN - OSAHENI AIMUANWOSA 781-922-6261 **PB 1**

ONELINE



NOTES:

1. Maintain 10ft clearance from front of Transformer.
2. Final quantity / location of bollards to be defined on site (if required). Also see ESB 759B.
3. All primary conduits shall be encased in concrete.
4. Drawing is not to scale. Distances are approximate. Final dimensions to be confirmed on site.

TRENCH SKETCH

11x17 Supplemental Sketch

nationalgrid

Work Request: 31028664 Drawn By: Osaheini Aimuanwosa
 Date: 8/23/2024

Job Description

Trench Sketch to show Proposed Installation of (1) 2 PULLBOXES, APPROX. 800' OF 2-3" CONDUIT

LEGEND

- PROPOSED CONDUIT
- EXISTING PAD
- ⊕ PROPOSED PULLBOX
- ⊙ EXISTING POLE

NOTE: Not to Scale



TOWN OF ANDOVER

TOWN CLERK'S OFFICE

36 Bartlet Street
Andover, MA 01810
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2025 JUN 16 PM 1:57
36 BARTLET STREET, ANDOVER, MA

**SPECIAL ONE DAY LIQUOR LICENSE FOR AN OUTDOOR EVENT ON TOWN PROPERTY
APPLICATION**

BUSINESS/ORGANIZATION INFORMATION	
BUSINESS/ORGANIZATION NAME:	OAK & IRON BREWING Co.
BUSINESS/ORGANIZATION ADDRESS:	18 RED SPRING RD ANDOVER MA 01810
IS THIS A BUSINESS OR NON PROFIT ORGANIZATION?	<input checked="" type="checkbox"/> BUSINESS <input type="checkbox"/> NON PROFIT ORGANIZATION
SOCIAL SECURTY/FID #:	[REDACTED]
INDIVIDUAL APPLICANT INFORMATION (THIS INFORMATION IS REQUIRED FOR ALL APPLICATIONS)	
NAME:	James CASS
ADDRESS:	[REDACTED]
PHONE:	[REDACTED]
EMAIL:	Jim@OAKANDIRONbrewing.com
DRIVER'S LICENSE #/STATE OF ISSUE:	[REDACTED]
DATE OF BIRTH:	[REDACTED]
EVENT INFORMATION	
DATE OF EVENT:	02.02.2025
TIME:	Start Time 11 : 00 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM End Time 2 : 00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
PURPOSE OF EVENT:	ANDOVER WINTER FEST
LOCATION OF LICENSED ACTIVITY:	Pomps Pond ANDOVER MA
DESCRIPTION OF OUTDOOR AREA:	Beer will be served within the fenced in area between the parking and the beach
WILL THERE BE ENTERTAINMENT?	STREAMED MUSIC
IS THE EVENT BEING CATERED?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (if no, will food be served? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO) *
APPROX NUMBER OF PEOPLE ATTENDING:	Adults ~ 100-150 Children ~ 50

* Free HotDogs served by Rec. Dept.

PURCHASE AND SERVICE	
IS THE ALCOHOL BEING DONATED?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
WHERE IS THE LIQUOR BEING PURCHASED FROM?	OAK & IRON BREWING Co.
ARE THEY A LICENSED WHOLESALER?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
WHO WILL BE SERVING THE ALCOHOL?	OAK & IRON TIPS CERTIFIED STAFF
IS AT LEAST ONE SERVER TIPS CERTIFIED OR HAVE COMPARABLE SAFETY TRAINING?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

SECURITY PLAN
1. DESCRIBE A PLAN FOR CROWD CONTROL.
THIS IS A SMALL EVENT, IN TOTAL OVER THREE HOURS ~ 150 PEOPLE.
THE FENCED IN AREA HAS AMPLE CAPACITY TO HANDLE THIS POPULATION.
SHOULD THERE BE AN ISSUE, THERE WILL BE ANDOVER ANDOVER POLICE DEPT. STAFF ON SITE
2. DESCRIBE A PLAN FOR DEALING WITH UNRULY PATRONS.
OAK & IRON STAFF IS WELL TRAINED AND EXPERIENCED DEALING WITH UNRULY CUSTOMERS. SHOULD THERE BE AN ISSUE, THERE ARE ANDOVER POLICE ON SITE.
3. DESCRIBE A PLAN FOR EMERGENCY EVACUATIONS.
a) EMERGENCY EVACUATIONS WILL GO THROUGH THE FENCING DOORWAYS <u>OR</u> .
b) PATRONS CAN CLIMB OVER THE 4' FENCE
4. DESCRIBE A PLAN FOR CONTROLLING ACCESS TO ALCOHOL BY UNDER AGED PATRONS.
OAK & IRON IS TRAINED IN REQUESTING AGE IDENTIFICATION AND READING LOCAL STATE DRIVERS LICENSES.

I certify under the pains and penalties of perjury that the above information is true and that I will comply with all applicable Alcohol Control Laws of the State of Massachusetts and policies and regulations of the Town of Andover.

SIGNATURE:

James R. Carr

DATE:

01.10.2025

This application must be pre-approved by the Police Department, Fire Department, Health Department, Building Division, and Treasurer before final approval by the Select Board.



**TOWN OF ANDOVER
TOWN CLERK'S OFFICE**

36 Bartlet Street
Andover, MA 01810
978-623-8230
www.andoverma.gov

TAX FORM

APPLICANT NAME: James R. Cass

I certify under penalties of perjury that the above named applicant has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of Individual or Corporate Name:
(Required for all applicants) James R. Cass / Oak & Iron Brewing Co.

Name of Corporate Officer:
(Required if applicant is a corporation) James R. Cass

Social Security #:
(Required if applicant is an individual) [REDACTED]

Federal Identification Number (FID #):
(Required if applicant is a corporation or non-profit): [REDACTED]

This license will not be issued unless the certification clause is signed by the applicant.

Your social security or FID number will be furnished to the Massachusetts Department of Revenue to determine if you have met tax filing or tax payment obligations. Licensees who fail to correct their non-filing delinquency will be subject to license suspension or revocation. This request is made under the authority of Mass General Laws c. 62, s. 49A.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/03/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Association Members Insurance Agency 80 Willow Road Nahant, MA 19080	CONTACT NAME: _____	FAX (A/C, No): _____	
	PHONE (A/C, No, Ext): _____	E-MAIL ADDRESS: _____	
INSURED Oak & Iron Brewing Co., Inc. 18 Red Spring Road, Suite 101 Andover, MA 01810	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : MA Retail Merchants WC Group Inc.		
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		

COVERAGES

CERTIFICATE NUMBER: 1

REVISION NUMBER: 0

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

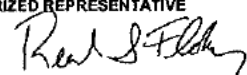
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____						EACH OCCURRENCE \$ _____ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ _____ MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ _____ GENERAL AGGREGATE \$ _____ PRODUCTS - COMP/OP AGG \$ _____ \$ _____	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ \$ _____	
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ _____ RETENTION \$ _____						EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ \$ _____	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	██████████	01/01/2025	01/01/2026	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000.00 E.L. DISEASE - EA EMPLOYEE \$ 100,000.00 E.L. DISEASE - POLICY LIMIT \$ 500,000.00	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Location: Winter Fest Poms Pond on 2.2

CERTIFICATE HOLDER

CANCELLATION

Town of Andover 36 Bartlet Street Andover, MA 18100	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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OAK&IRO-01

TANKERS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/3/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Allen Insurance and Financial 51 Main Street Waterville, ME 04901	CONTACT NAME: PHONE (A/C, No, Ext): (800) 439-4311 FAX (A/C, No): E-MAIL ADDRESS: info@allenif.com													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Tri State Insurance Co</td> <td>31003</td> </tr> <tr> <td>INSURER B: Acadia Insurance Co</td> <td>31325</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Tri State Insurance Co	31003	INSURER B: Acadia Insurance Co	31325	INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER B: Acadia Insurance Co	31325													
INSURER C:														
INSURER D:														
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INSURED Oak & Iron Brewing Co. 18 Red Spring Rd Andover, MA 01810														

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR (INSD / WVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:		[REDACTED]	12/31/2024	12/31/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		[REDACTED]	12/31/2024	12/31/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		[REDACTED]	12/31/2024	12/31/2025	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 Pers&Adv Injury \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	[REDACTED]			PER STATUTE OTH-ER E.L EACH ACCIDENT \$ E.L DISEASE - EA EMPLOYEE \$ E.L DISEASE - POLICY LIMIT \$
B	Liquor Liability		[REDACTED]	12/31/2024	12/31/2025	Each Common Cause 1,000,000
B	Liquor Liability		[REDACTED]	12/31/2024	12/31/2025	Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate Holder is included as Additional Insured in regard to the general liability for ongoing operations when agreed in writing in a contract or agreement via the policy broadening endorsement.

CERTIFICATE HOLDER

Town of Andover
36 Bartlet Street
Andover, MA 01810

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
[Signature]



CERTIFICATE OF COMPLETION

This certifies that

James Cass

is awarded this certificate for

TIPS On-Premise Alcohol Server Training

Hours
3.00

Completion Date
09/08/2023

Expiration Date
09/07/2026



Scott McFadden
Official Signature

THIS CERTIFICATE IS NON-TRANSFERABLE

6504 Bridge Point Parkway Suite 100 | Austin, TX 78720 | 677.861.2235 | www.360training.com

TIPS On-Premise
Issued: 09/08/2023
Certificate #: ON-000029555173

CERTIFIED
Expires: 09/07/2026

James Cass



Phone: 800-438-8477
www.gettips.com

This card was issued for successful completion of the TIPS program.

Signature _____

To: Town of Andover Select Board
Town of Andover Town Manager

From: Alan D. Mandl
Ferriter, Scobbo & Rodophele, P.C.

Date: January 10, 2025

Re: Applications for Small Cell Wireless Installations- Revised Policy Draft

Introduction/Background/Assignment

The Town of Andover Select Board adopted the Town of Andover Policy, “Applications for Small Cell Wireless Installations,” effective as of April 11, 2019 (the “2019 Policy”). Subsequent to Verizon Wireless grant of location proceedings in the Fall of 2022, the Town authorized and directed counsel to review and revise the 2019 Policy.

The Select Board’s grant of location authority is derived from G.L.c.166, Sections 21 and 22. In turn, the exercise of that authority is subject to standards established under the federal Telecommunications Act. 47 U.S.C. §332(c)(7)(B).

The regulation of the placement, construction and modification of personal wireless facilities by a local government:

Shall not unreasonably discriminate among providers of functionally equivalent services;

Shall not prohibit or have the effect of prohibiting the provision of personal wireless services:

Requires that the local government shall act on any request for authorization to place, construct, or modify personal wireless facilities within a reasonable period of time after the request is duly filed, taking into account the nature and scope of such request;

Requires that any decision to deny a request shall be in writing and supported by substantial evidence contained in a written record;

Shall not regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions.

Development of the 2025 Draft Policy to Cover Essential Components

In April 2023, a draft revised policy was submitted to Town Counsel and the Deputy Town Manager/Town Clerk. Following discussions on their input, the draft policy was updated and it has now been provided to the Planning Division and Department of Public Works for their review. After receipt of their input and any further revisions to the draft, a 2025 Draft Policy will be provided to the Select Board.

Counsel reviewed: relevant state and federal statutes, case law and FCC orders; municipal bylaws, regulations and policies adopted by communities in and outside of Massachusetts; models prepared by both industry and non-industry stakeholder groups and comments submitted by these and other stakeholders. Such stakeholders included the CTIA, Americans for Responsible Technology, Environmental Health Trust, NATOA/National League of Cities, Physicians for Safe Technology and Last Tree Laws. Counsel identified improvements to the 2019 Policy in light of this review. Many revisions have been proposed in order to incorporate the following generally regarded essential components of an effective small cell wireless policy:¹

Procedure and Policies

- Set forth application and hearing procedures in order to guide permitting authorities, applicants and the public
- Promote compliance with state and federal procedural standards and decision-making standards (application completeness review; shot clock intervals; written findings, decision and statement of reasons made close together time)
- Inclusion of definitions, acceptable locations, aesthetic standards, safety standards
- Inclusion of standards for exceptions and their justification
- Peer review
- Handling of batch applications
- Applicable non-recurring application fees and annual recurring fees

Application Requirements

- Provide applicants with clear guidance regarding public safety and aesthetic criteria
- Enable permitting authority to evaluate completeness of an application
- Enable permitting authority to determine compliance with substantive standards and assess any requests for exceptions
- Help support factual findings, rulings and a statement of reasons for a decision

¹ These essential components have been identified by a number of resources, including CTC Technology and Energy, Americans for Responsible Technology, Physicians for Safe Technology, NATOA/National League of Cities, counsel to national organizations and your counsel in presentations which include those made to the Massachusetts Municipal Law Association and the Citizen Planner Training Collaborative. They are reflected in many bylaws, regulations and policies adopted in other local jurisdictions in and outside of Massachusetts.

- Clarify relationship to separate permitting requirements that may apply (building permit, electrical permit, street excavation permit, historic district certificate, etc.)

Standard Conditions

- Grant of location conditioned upon acceptance of standard conditions
- Indemnification, insurance, performance bond
- Post construction review for compliance with approved design specifications
- Post construction compliance with FCC radiofrequency emissions regulations
- Annual certifications of continued compliance
- Completion of construction in a timely manner
- Removal of facilities no longer used
- Acceptance of annual inspections by the Town

An overriding objective of the 2025 Draft Policy is to maximize local control of small cell wireless siting consistent with legal authority under Massachusetts law and limitations on that authority under the Federal Telecommunications Act.

Scope of the 2025 Draft Policy

The 2025 Draft Policy is limited to wireless facilities located in the public ways. It does not cover wireless facilities located on private property, which are subject to zoning laws. It does not cover “Eligible Facilities Requests” governed by 47 U.S.C. Section 1455 and related FCC orders. Absent an express policy governing the filing and review of Eligible Facilities Requests, an Eligible Facilities Request may be submitted in the same manner as a grant of location application. The application requirements for and review of Eligible Facilities Requests would be subject to federal limitations and do not follow grant of location procedures and application standards (e.g., limited scope of review whether the modification to existing wireless facilities qualifies as an Eligible Facilities Request under federal law, failure to act within a 60 day shot clock interval may result in an Eligible Facilities Request being deemed granted).

High Level Summary of the 2025 Draft Policy Section by Section

2025 Draft Policy sections can be reviewed in detail and any questions can be addressed during the review process.

In general, a detailed approach was taken in developing the 2025 Draft Policy. The level of detail is consistent with what many local governments have adopted in Massachusetts and in other jurisdictions. Of course, a number of local governments have adopted less detailed procedures and standards. One size does not fit all. The 2025 Draft Policy reflects substantive provisions that have been adopted in other communities. They are designed to fall within scope of local authority under Massachusetts law and be consistent with applicable federal law.

As part of its review process, the Select Board is encouraged to invite public comment on the 2025 Draft Policy. Input from utility pole owners, wireless stakeholders, residents, other public officials and other interested parties should assist the Select Board in its evaluation of the 2025 Draft Policy.

The following is a high-level summary of the current draft policy sections.

Purpose and Intent of Policy

- The Policy objectives are in line with Town legal authority under state law
- The Policy is intended to provide uniform procedures and standards
- The Policy is intended to be consistent with federal law

Definitions

- Useful for understanding and applying the Policy
- Track federal law where applicable

Scope of Policy

- Clarifies what is covered by the Policy
- Clarifies that the Policy does not extend to private property

Grant of Location Procedures

- Eligible applicants
- Submission of applications; fees
- Completeness of applications; Incomplete applications
- Exceptions to a grant of location standard
- Modification or supplementation of application
- Peer review
- Shot clock intervals
- Public hearing
- Written decision and statement of reasons; decision-making criteria
- Appeals
- Acceptance of grant of location order with conditions
- Additional grant of location approvals and activity that does not require an additional grant of location
- Other permits that may be needed

Grant of Location Standards and Requirements

Location

- Locational standards
- Preferable locations
- Location evaluations
- Collocation preference
- New poles, replacement poles
- Prohibited poles
- Area with underground utilities
- Aesthetic and safety considerations

Visual Impact Analysis

Strand-mounted Antennas

Standards and Requirements for Personal Wireless Service Facilities

- Intended to cover design standards
- Intended to address safety considerations
- Electric power meters-need for and placement
- Radiofrequency emissions; compliance with FCC regulations; certifications and testing after construction for continued compliance
- Pedestrian path and amenity zone
- Access, circulation and site distances

Diminution of Property Value is not Included as a Basis for a Denial

Diminution of property value is not included as a basis for denying a grant of location. Grant of location authority under state law involves a determination whether a proposed use of a public way would “incommode the public use of public ways.” That determination may take into account aesthetic considerations. The Select Board’s decision addresses the location of the proposed facilities, the height of the facilities and the facilities deployed, taking into account public safety and aesthetic considerations.

Diminution of property value does not appear to be a cognizable interest under the grant of location statutes. *See, Standerwick v. Zoning Bd. of Appeals of Andover*, 447 Mass. 20,31-32 (2006). The exercise of police power authority by a municipality may lessen the value of private property, but owners of such property share in the benefits conferred upon the community. *Pobeda Rt Li, LLC v. Zoning Bd. of Appeals of Watertown*, 104 Mass. App. Ct. 250 (2024).

As a practical matter, including the diminution of property value as a decision-making standard would force applicants to include an additional layer of information, such as appraisals, studies and expert witnesses. In turn, abutters may offer information on the issue. The review of an application within shot clock intervals could become difficult. A denial based upon this criterion would increase the risk of a federal lawsuit based upon an effective prohibition of personal wireless service and lack of substantial evidence, in addition to separate grounds under state law such as exceeding grant of location authority.

Further, acceptance of diminution of value claims could result in property owners across the Town making the same argument.

Historic Locations

The Select Board may properly consider the effect of the proposed wireless facilities upon historic buildings and locations. It is most likely that the placement of utility poles and wires near historic buildings and locations was handled by the Select Board pursuant to its grant of location authority. Wireless facilities should be subject to the same grant of location authority as utility poles and attachments. The Select Board can exercise grant of location authority where the proposed wireless facilities are within an historic district.

In those instances where a proposed location is within an Historic District, the Select Board may: (1) require the grant of location applicant to submit a certificate from the Historic District Commission; (2) condition a grant of location upon the applicant providing a certificate from the

Historic District Commission; (3) seek a determination from the Historic District Commission that it does not exercise authority over poles and wireless facilities located in the public ways); or (4) exercise its grant of location authority without consideration of action by an Historic District Commission, which exercises independent authority based on its own enabling laws and regulations.

The Draft Policy requires that an applicant fully explain and document the state and federal historic standards applicable to its proposed facilities

Standard Conditions

- Annual recertification
- Annual fees per location
- Expiration of grant of location for non-use
- Abandonment and removal of wireless facilities
- Non-emergency repairs
- Maintenance
- Removal of utility poles
- Licenses and permits
- Performance bond
- Indemnification
- Insurance
- As-built drawings
- Construction matching approved permit information
- Current contact and site information
- Relocation
- Dig-Safe; National Joint Utilities Notification System
- Assignment
- Streetscape redesign

Amendments to Policy

Severability

Effective Date

Recommendations

The Select Board should seek input on these standards in the 2025 Draft Policy as well as on the process for receiving, reviewing and acting upon grant of location applications. Review of the process steps and how they are implemented is critical because of federal standards governing the review of applications for completeness and the need to address shot clock intervals, presumptive deadlines for action on grant of location applications. The process adopted must be feasible for the Town to implement.

The 2025 Draft Policy provides for the use of peer review under circumstances where peer review is deemed necessary.

The Town should confer with the utility pole owners, primarily the electric utility and Verizon, since they require attaching entities to enter into pole attachment license agreements which contain many requirements applicable to wireless attachments. Consulting with the pole owners will enable the Town to understand the relationship between and timing regarding a wireless party's obtaining the right to use a specific utility pole and its applying for a grant of location.

The Town should consider whether any restrictions applicable to underground areas should be broad, as currently drafted, or limited to designated underground utility districts established through the bylaw adoption process and related requirements pursuant to G. L.c.166, Sections 22A-22N.

Radiofrequency emissions are covered in the 2025 Draft Policy. Public comment may assist the Town in evaluating the 2025 Draft Policy provisions. It is recommended that these provisions be discussed. The 2025 Draft Policy covers demonstrations of compliance with FCC regulations at the application stage, immediately after commencement of operation and on an annual basis.

The 2025 Draft Policy uses the FCC's presumptively reasonable non-recurring and recurring annual fees. This approach is necessary in the absence of cost of service studies to support the adoption of fees which are higher than the FCC's presumptively reasonable levels.

A sample license agreement has been drafted if the Town needs to license the use of municipal infrastructure in the public ways (including municipally-owned poles, such as streetlight poles) for wireless attachments. The FCC and the federal courts have required that access to municipal infrastructure of this type be afforded.

The Town will need to adopt a grant of location application form and instructions to accompany the revised Policy that plans to implement. Use of a checklist is recommended.

DRAFT TOWN OF ANDOVER GRANT OF LOCATION PROCEDURES AND STANDARDS
FOR PERSONAL WIRELESS SERVICE FACILITIES-REVISIONS AS OF JANUARY 21, 2025

PRIVILEGED AND CONFIDENTIAL-ATTORNEY WORK PRODUCT

**TOWN OF ANDOVER POLICY
PROVIDING GRANT OF LOCATION APPLICATION PROCEDURES AND
STANDARDS FOR PERSONAL WIRELESS SERVICE FACILITIES LOCATED IN
TOWN PUBLIC RIGHTS OF WAY**

The Town of Andover ("Town") by and through its Select Board hereby adopts this Policy to provide grant of location application procedures and standards for Personal Wireless Service Facilities located in Town Public Rights of Way ("Policy").

PURPOSE AND INTENT OF POLICY

- a. The purpose of this Policy is to provide uniform and comprehensive procedures and standards to regulate the placement of Personal Wireless Service Facilities in the Public Rights of Way, consistent with Applicable Law. The Policy is intended to facilitate the development of Personal Wireless Service Facilities within the Public Rights of Way in order to meet the public need for reliable wireless service while: protecting public health and safety; assuring compatibility with and avoiding the incommoding of other uses of the Public Rights of Way; and safeguarding against degradation of the aesthetic and historic character of the Town, including but not limited to its Public Rights of Way, streetscapes, parks, historic areas, village centers and residential areas.
- b. The Policy is not intended to and should not be interpreted or applied to:
 - i. Prohibit or effectively prohibit the provision of Personal Wireless Services;
 - ii. Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate wireless communications service, subject to any competitively neutral and non-discriminatory rules, regulations or other legal requirements for management of the Public Rights of Way;
 - iii. Unreasonably discriminate among providers of functionally equivalent services;
 - iv. Deny any Application for authorization to place, construct or modify Personal Wireless Service Facilities on the basis of environmental effects of radio frequency emissions to the extent that such Personal Wireless Service Facilities comply with the FCC's regulations concerning such emissions;
 - v. Prohibit any collocation or modification that the Town may not deny under any applicable federal or state law; or
 - vi. Preempt any applicable federal or state law.

DEFINITIONS

Alternative Location Evaluation

The evaluation of alternative locations required under this Policy.

Antenna Structure

Any structure designed to specifically support an antenna and/or any appurtenance mounted on such a structure or antenna.

Applicable Laws

Applicable Laws means all controlling applicable federal, state and local statutes, regulations, bylaws, policies, and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

Applicant

Any person or entity, including representatives thereof, submitting an Application to place Personal Wireless Service Facilities in the Public Rights of Way.

Application

A petition for a Grant of Location which is submitted pursuant to this Policy and Applicable Law.

Batch Application

Multiple separate Applications filed at the same time, each for one or more sites, or a single Application covering multiple sites.

Distributed Antenna System

A network of spatially separate antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area.

Eligible Facilities Request

An Eligible Facilities Request means as that term is defined under 47 U.S.C, §1455 and related FCC regulations, which involve a pole (1) located in a Public Right of Way and (2) classified as a "base station."

Exception

A Grant of relief by the Town from a specific requirement or limitation in this Policy as part of a decision on a Grant of Location Application.

Facility

An antenna facility or Structure that is used for the provision of Personal Wireless Service, whether such service is provided on a standalone basis or commingled with other wireless communications services.

FCC

The Federal Communications Commission.

Grant of Location

Approval under G.L.c.166, §§21 and 22 and this Policy to construct, operate and maintain Personal Wireless Service Facilities at specific locations on, over or below a Public Right of Way, subject to compliance with all Applicable Laws.

Grantee

A party which has been issued a Grant of Location order by the Board, accepted the Grant of Location order and its Standard Conditions and recorded the Grant of Location order in accordance with Applicable Law.

Historic District

An area within the Town which has been established as an historic district pursuant to G.L.c 40C.

Historic Location Evaluation

The Historic Location Evaluation required under this Policy.

Personal Wireless Services

Personal Wireless Services means commercial mobile services, unlicensed wireless services and common carrier exchange access services, as set forth in 47 U.S.C. §332 (c) (7) (C) (1).

Personal Wireless Service Facilities

Facilities for the provision of Personal Wireless Services.

Personal Wireless Service Provider

A provider of Personal Wireless Services and, for purposes of this Policy a DAS operator and a similar carrier-neutral party whose facilities are used to provide Personal Wireless Services and who is qualified as an Applicant.

Public Rights of Way

Also referred to as a Public Way or Public Right of Way, an existing way in the Town which is (a) public in character by virtue of: (1) a laying out by the Town in the manner prescribed by statute; (2) prescription; or (3) prior to 1846, a dedication by the owner to public use, permanent and unequivocal, coupled with an express or implied acceptance by the public; and (b) dedicated to public use by the Town and for which the Town is responsible for management and maintenance.

Select Board

The Town of Andover Select Board.

Small Wireless Facilities

As used herein, consistent with FCC regulations, and unless superseded by a change in Applicable Law, Small Wireless Facilities are a subset of Personal Wireless Service Facilities which meet the following conditions:

- (1) The facilities-

- i. Are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR section 1.1320(d), or
 - ii. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - iii. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
- (2) Each antenna associated with the deployment, excluding associated equipment (as defined in the definition of antenna in section 1.1320(d), is no more than 3 cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facilities do not require antenna structure registration under part 17 of 47 CFR;
- (5) The facilities are not located on Tribal lands, as defined in 36 CFR 800.16(x); and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR section 1.1307 (b).

Strand-Mounted Antenna

Personal Wireless Service Facilities in which antennas, cables, lines and radio equipment are mounted directly on existing aerial cable between two Utility Poles and enclosed in a shroud.

Structure

For purposes of this Policy, (a) a Utility Pole or replacement Utility Pole and (b) any new pole, located in the Public Rights of Way, the primary purpose of which is to serve as a support structure for Personal Wireless Service Facilities.

Tower

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopoles. The requirements for a Tower and associated antenna facilities shall be covered in Town zoning bylaws. Towers are not permitted in the Public Rights of Way.

Town-Owned Infrastructure

Infrastructure, including but not limited to, streetlight poles and traffic signals owned, operated and maintained by the Town and located in a Public Right of Way.

Utility Pole

An upright pole used to support electric cables, telephone cables, telecommunications cables and related facilities owned and maintained by an electric distribution company, incumbent local exchange carrier or provider of cable or telecommunications service, which is regulated by the Massachusetts Department of Public Utilities and/or Massachusetts Department of Telecommunications and Cable. A Utility Pole is not Town-Owned Infrastructure.

SCOPE OF POLICY

This Policy governs the permitting of:

- a. Personal Wireless Service Facilities attachments to existing or replacement Utility Poles which are located in the Public Rights of Way and which do not have any pre-existing wireless attachments.
- b. Modifications to existing Personal Wireless Service Facilities attached to existing or replacement Utility Poles which are located in the Public Rights of Way and which do have pre-existing wireless attachments but do not satisfy the requirements for an Eligible Facilities Request.
- c. Construction of a new pole in a Public Right of Way for the primary purpose of providing Personal Wireless Services; and
- d. Personal Wireless Service Facilities attachments to or modifications to existing Personal Wireless Service Facilities attached to existing Town-Owned Infrastructure in the Public Rights of Way, provided, however, that an Applicant seeking to attach to such Town-Owned Infrastructure must obtain a Grant of Location and enter into a revocable license agreement with the Town.

This Policy does not apply to the permitting of wireless communications facilities which are located in or on private ways or private property. Eligible Facilities Requests may be covered by a separate policy.

GRANT OF LOCATION PROCEDURES

- a. Eligible Applicants.
 - i. An eligible Applicant must have the right and authority to use the Public Rights of Way pursuant to Applicable Law (including, but not limited to G.L.c.166, §21) for purposes of constructing, installing, modifying, operating and maintaining facilities used to provide Personal Wireless Service.
 - ii. In order to establish eligibility, an Applicant must provide (1) a Statement of Business Operations filed with the Massachusetts Department of Telecommunications and Cable and evidence of its current registration status; (2) a copy of any current FCC license or other authorization covering the provision of Personal Wireless Service in the Town; and/or (3) other written evidence of authority which is satisfactory to the Town.
 - iii. An Applicant shall also provide evidence of its authority to conduct its proposed activity within the Commonwealth of Massachusetts, such as a certificate from the Secretary of State of the Commonwealth of Massachusetts
 - iv. Carrier-neutral Applicants, such as Distributed Antenna System operators, shall (1) provide satisfactory evidence that they have entered into a contract with at least one

Personal Wireless Service Provider which will make use of the proposed Facilities; or (2) accept as a Grant of Location condition that they shall not commence construction of their Personal Wireless Service Facilities prior to notifying the Town of the execution of such a contract and providing satisfactory evidence of such contract.

b. Submission of Applications; Fees.

- i. Applications shall be submitted to the Town Clerk's Office accompanied by payment of the Application Fee. Application Fees are subject to modification and may be revised by the Select Board from time to time.
- ii. Application Fees are \$500 for a single Application for 1-5 locations and \$100 for each additional location where the support Structure is an existing Utility Pole or a Utility Pole which replaces an existing Utility Pole at substantially the same location. The same Application Fees apply to existing or replacement Town-Owned Infrastructure locations.
- iii. The Application Fee for a new support Structure shall be \$1,000 for each new location. Applicants may be required to pay a peer review fee.
- iv. Applicants are responsible for the payment of fees for other permits needed in order to construct Personal Wireless Service Facilities and commence operations.
- v. Permittees will be subject to a recurring annual fee of \$270 per location.
- vi. Applications shall be submitted using forms prescribed by and available from the Town Clerk's Office.
- vii. Ten (10) hard copies and 1 (one) electronic copy of the Application(s) must be filed with the Town Clerk's Office. Applications may be hand-delivered during normal Town Hall office hours or mailed. If mailed, the date of receipt shall be the date from which Shot Clock intervals are measured. No emailed applications shall be accepted for filing.
- viii. Upon receipt, the Town Clerk's Office shall date and time stamp the Application as received.
- ix. The Town Clerk's Office shall circulate a copy of the Application to the following departments for comment and review: Department of Public Works; Building; Planning; Police; Fire; Law; and any other department the Town Manager, in his or her sole discretion, determines.

c. Incomplete Applications.

- i. The Select Board will follow procedural requirements for incomplete Applications and any continued incompleteness established by the FCC in its orders regarding applications to locate Personal Wireless Service Facilities in the Public Ways, subject

to 47 U.S.C. §332(c)(7)(B) and FCC orders, including any specific requirements that apply in the case of Small Wireless Facilities.

- ii. Formal notice of initial incompleteness shall be given to the Applicant by the Town Manager as soon as possible, and in all cases within ten (10) days of the commencement of the shot clock interval, as determined in accordance with subsection (h) of this Policy, where the Application covers solely Small Wireless Facilities and otherwise, within thirty (30) days of the commencement of the shot clock interval, as determined in accordance with subsection (h) of This Policy, and will specifically identify: (1) all missing documents and information and all unpaid fees; and (2) the code provision, regulation, form requirement, policy requirement, application instruction or otherwise publicly stated requirement that requires the documents, information and/or fees be submitted.
- iii. If such notice is not provided to the Applicant within such applicable period, the Select Board shall not toll the running of a shot clock interval based upon the incompleteness of the Application. However, an Applicant remains responsible for submitting a complete Application and bears the risk of a denial of its Application based upon incompleteness of its Application even if no timely notice of incompleteness was provided.
- iv. An Application deemed incomplete pursuant to (c)(ii) of the above procedures must be made complete within one hundred eighty (180) calendar days after the issuance of the notice of incompleteness or the Application shall be deemed to be automatically withdrawn. No refunds of Application fees or peer review fees for reasonable costs incurred by the Town and paid by the Applicant shall be refunded for withdrawn applications.
- v. In the case of a Batch Application, a notice of incompleteness may apply to fewer than the total number of locations included in the batch. In this instance, each location which is not subject to a notice of incompleteness will be processed in accordance with the applicable shot clock interval.

d. Complete Application or No Notice of Incompleteness.

If no notice of incompleteness has been issued, the Select Board shall be notified by the Town Manager.

e. Exceptions.

- i. Applications shall include all of the forms, information, materials and documentation required by this Policy and which demonstrate the Applicant's compliance with Grant of Location Standards and acceptance of Grant of Location Standard Conditions.
- ii. A limited exception from a requirement under this Policy may be warranted where strict compliance would impose, if so determined by the Select Board, an unnecessary

or unduly burdensome requirement on the Applicant, taking into account benefits to the Town from enforcing the requirement and the existence of a reasonable alternative. An Applicant requesting an Exception shall include in its Application (a) the requirement for which an Exception is requested; (b) detailed factual support for the granting of the requested Exception; and (c) the reasonable alternative requirement being proposed.

- iii. If the Applicant intends to seek an Exception from any Personal Wireless Service Facilities Grant of Location Standards or Grant of Location Standard Conditions regarding the placement, construction and modification of Personal Wireless Service Facilities on the grounds that it would: (1) prohibit or have the effect of prohibiting the provision of Personal Wireless Services; (2) unreasonably discriminate among providers of functionally equivalent services; or (3) otherwise conflict with federal law, the Applicant shall submit as part of its Application a detailed written explanation of the Exception requested and the basis for granting an Exception, supported by factual information.
- iv. The Select Board will determine whether to grant an Exception and provide a written statement of reasons regarding its determination.

f. Modification or Supplementation of Application.

Any modification(s) of or supplementation to its Application as originally submitted may result in a delay of the hearing process and Select Board decision. If the Select Board determines that any submitted proposed modification or supplementation is so substantial that the public notice of the Application is inadequate, submission of a new Grant of Location Application shall be required.

g. Peer Reviews.

- i. In accordance with G.L. c. 44, § 53G, the Select Board shall determine whether a peer review of an Application is needed in order to enable the Select Board to fully and timely evaluate the technical aspects of the Application, including but not limited to: accuracy, adequacy and completeness of submissions; compliance with Policy Grant of Location Standards and Requirements; proof of compliance with applicable FCC radio frequency emissions standards; whether any requested Exception is warranted; technical feasibility issues (including, but not limited to, an evaluation of alternative locations); evaluation of requested Exceptions; the validity of conclusions reached or claims made by the Applicant; and any other factors deemed appropriate by the Select Board to effectuate the purposes of this Policy. A peer review may be required to enable the timely review of a Batch Application. A peer review shall be conducted by a consultant or consultants selected by the Select Board at the Applicant's expense, for the reasonable costs incurred by the Town. The Applicant shall be entitled to seek administrative review of the selection of such consultant or consultants by filing an appeal with the Select Board; provided that the grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not

possess the minimum required qualifications. Any such administrative review shall be subject to the provisions of G.L. c. 44, § 53G.

- ii. The Select Board may require advance periodic monetary deposits to secure reimbursement for the reasonable costs of peer review. Such deposits will be held and accounted for in accordance with Applicable Law. If it appears to the Select Board that the initial deposit will be insufficient to cover current or anticipated peer review expenses, the Select Board shall cause the Applicant to advance an additional deposit to meet such current or anticipated expenses. Any materials to be submitted by a Town peer reviewer shall be filed with the Town Manager or designee and provided to the Applicant at least forty eight (48) hours prior to the public hearing, provided, however, if the Applicant modifies or supplements its Application, the peer reviewer shall use reasonable efforts to modify or supplement the peer review within forty-eight (48) hours after receipt of the Applicant's modification or supplementation.

h. Shot Clock Intervals.

Shot Clock intervals are determined by counting forward beginning on the day after the date when the Application is date stamped by the Town Clerk, by the number of days of the shot clock period identified below; provided, that if the shot clock interval calculated in this manner is a holiday, the shot clock interval will end on the next business day after such date. The term "holiday" means any of the following: Saturday, Sunday, and any holiday recognized by the Town and any day the Town is closed for business. The term "business day" means any day that is not a holiday, as defined herein. The shot clock interval may be reset or tolled by mutual agreement or upon the Town Manager's issuance of a notice of incompleteness as provided under this Policy and applicable federal law.

- i. For an Application to attach Small Wireless Facilities to an existing Utility Pole or replacement pole, the shot clock interval shall be within sixty (60) calendar days of the shot clock interval commencement date, unless the time period is reset or tolled by mutual agreement or due to incompleteness of the Application.
- ii. For an Application to deploy Small Wireless Facilities using a new Utility Pole or other new Structure, the shot clock interval shall be within ninety (90) calendar days of the shot clock interval commencement date, unless the time period is reset or tolled by mutual agreement or due to incompleteness of the Application.
- iii. In the case of a Batch Application, the shot clock interval will be based on whether all of the locations in the batch are of a same type and would be governed by a sixty (60) calendar day or ninety (90) calendar day shot clock if filed separately. If the batch includes proposed locations that would be subject to different shot clocks, the ninety (90) calendar day shot clock interval shall apply to the entire batch.
- iv. For an Application to attach Personal Wireless Service Facilities which are not Small Wireless Facilities to an existing Utility Pole or replacement pole, the shot clock interval will be within ninety (90) calendar days of the shot clock interval

commencement date, unless the time period is reset or tolled by mutual agreement or due to incompleteness of the Application.

- v. For an application to deploy Personal Wireless Service Facilities which are not Small Wireless Facilities and are using a new Structure, the shot clock interval will be within one hundred fifty (150) calendar days of the shot clock interval commencement date, unless the time period is reset or tolled by mutual agreement or due to incompleteness of the Application.
 - vi. In the case of an attachment to Town-owned Infrastructure that requires a pole to be replaced in order to safely accommodate the attachment, the shot clock interval will be sixty (60) days in the case of attachments which are Small Wireless Facilities and ninety (90) days in the case of attachments which are not Small Wireless Facilities.
 - vii. Locations in excess of five (5) in a Batch Application, the pendency of multiple applications from the same Applicant or the Applicant and other applicants, the submission of additional materials by the Applicant, failure of the Applicant to have present at a hearing individuals who can explain and answer questions regarding all facets of the Application and other factors beyond the reasonable control of the Select Board may constitute a reasonable basis for exceeding the shot clock interval. The Select Board shall identify such factors in a decision which is rendered after the applicable shot clock interval.
 - viii. The Select Board and the Applicant may enter into one or more tolling agreements in order to extend the applicable shot clock interval.
- i. Public Hearing.
 - i. The Applicant shall pay for and publish and mail legal notices of the public hearing to local newspapers and abutters, as applicable, in accordance with G.L.c.166, §22. The Applicant is responsible for obtaining the abutters list for each pole location within the Application. The Applicant must provide proof of mailing and publication to the Town Manager.
 - ii. The Select Board will conduct a public hearing on the Application, subject to public notice requirements and requirements for direct notice to abutters under G.L. c. 166, § 22.
 - iii. The Board may supplement the statutorily required notice by methods including, but not limited to, posting a notice of hearing on the Town website, posting Application materials on the Town website and establishing a system which enables interested parties to obtain notice by email when Personal Wireless Service Facilities Grant of Location Applications are filed.
 - j. Written Decision and Statement of Reasons.

The Board shall issue a written decision together with findings and a statement of reasons for granting, denying or granting with conditions the Application, based upon the public hearing record. The criteria to be applied shall include the following:

- i. whether the Application is in material compliance with the Grant of Location Procedures and Standards;
- ii. whether the Applicant has accepted the Standard Conditions;
- iii. whether Application fees have been paid;
- iv. whether the Application is complete in material respects; and
- v. whether and in what respects the proposed facilities at the proposed location would incommode public use of Public Rights of Way.

The Select Board may consider, among other things:

- i. adverse aesthetic and public safety impacts of the proposed Personal Wireless Service Facilities upon properties that are located adjacent to, or in close proximity to, the proposed location's Personal Wireless Service Facilities or upon any other properties situated in a manner that would sustain adverse aesthetic or public safety impacts due to installation of the proposed Personal Wireless Service Facilities;
 - ii. adverse aesthetic impacts upon the Town, including its parks, scenic ways, streetscapes, historic areas (including but not limited to Historic Districts) or other properties within the Town;
 - iii. whether the proposed installation has a sufficient fall zone and/or safe zone to afford the general public safety against the potential dangers of structural failure, icfall, debris fall, pole knock down and fire;
 - iv. whether the proposed personal Wireless Facilities would incommode public use of Public Rights of Way;
 - v. whether a requested exception has been denied; and
 - vi. the feasibility of an alternative location where the adverse impacts of the proposed Personal Wireless Service Facilities would be mitigated.
- k. Appeals.

Any appeals from a final decision by the Select Board shall be governed by Applicable Law.

- l. Acceptance of Grant of Location Order with Conditions. Grant of Location orders with any conditions (including Standard Conditions) must be accepted by the Applicant as required under G.L. c. 166, § 22. The Applicant shall pay the fee for recording the Grant of Location order as required under G.L.c.166, §22.
- m. Additional Grant of Location Approval Required; Activity that Does Not Require Additional Grant of Location Approval.
 - i. Any increase in the height, number or dimensions of Personal Wireless Service Facilities components after construction shall be subject to Town approval in accordance with Applicable Law.
 - ii. No Town Grant of Location approval is required for renewing, repairing or replacing the Personal Wireless Service Facilities as long as they do not increase the height, number or dimensions of the existing Personal Wireless Service Facilities or decrease ground clearance below the minimum allowed. A Permittee shall notify the Town of any proposed renewal, repair or replacement of Personal Wireless Facilities and demonstrate whether or not they increase the height, number or dimensions of the existing Personal Wireless Facilities or decrease ground clearance below the minimum allowed and obtain written acknowledgment from the Town that no approval is required before commencing any such renewal, repair or replacement.
 - iii. In the event that, after a Grant of Location order and before construction, the position of a Personal Wireless Service Facilities component on a Utility Pole or other Structure needs or is required to be moved, the Permittee shall submit any revisions to its plans to the Director of Public Works, the Fire Chief and the Building Inspector, who shall each submit written comments to the Select Board or its designee, who may authorize the change so long as the change does not reduce ground clearance below the minimum allowed, or increase the height, dimensions or number of the Personal Wireless Service Facilities by more than a *de minimus* amount (as determined by the Town) or violate applicable Town requirements.
- n. Other Permits Needed in Order to Construct and Operate
 - i. Grant of Location Permittees are responsible for obtaining any additional permits which are needed in order to construct and operate the proposed Personal Wireless Service Facilities. Such permits may include, but are not limited to, building permits, electrical permits, street opening permits and historic district commission certificates. Separate applications and application fees apply to each permit as determined by the applicable permitting authority.
 - ii. If the proposed location is within an Historic District of the Town, and if the Applicant is required to obtain, but has not received from an Historic District Commission and submitted with its Application an appropriate certificate and statement that all appeal periods have expired, the Applicant shall accept as a condition of a Grant of Location that it shall not construct the proposed Personal Wireless Service Facilities until after

it has received a certificate issued by the Historic District Commission which is final and not subject to appeal and has filed such certificate with the Town Clerk's Office. If applicable, the Applicant shall submit to the Select Board any formal statement by an Historic District Commission that it such commission does not exercise authority over the placement of Poles and/or Personal Wireless Service Facilities.

GRANT OF LOCATION STANDARDS AND REQUIREMENTS

The following Grant of Location Standards and Requirements are deemed necessary to preserve the aesthetic character of the Town, its neighborhoods and areas affected by the deployment of Personal Wireless Service Facilities in the Public Rights of Way, avoid visual clutter, preserve public safety, protect historical resources, and prevent the incommoding of public use of the Public Rights of Way.

LOCATION

The Applicant shall provide a detailed map with the locations of its existing Personal Wireless Service Facilities within the Town. The Applicant shall provide a detailed map with locations of the existing and/or proposed poles or other structures on which the proposed Personal Wireless Service Facilities are to be placed, including specific pole identification numbers, if applicable. The Applicant shall provide the measured distances between the proposed location and each of the four (4) closest buildings or structures. The locational data must be supplied in a format that can be uploaded as a data layer to the Town's GIS map. The Applicant shall provide an explanation of the service objectives of its proposal (such as improved coverage or capacity, enhanced or new services) and how the proposal addresses those objectives.

a. Most Preferable Locations

The following are the most preferred locations for new small wireless facilities in the order of preference (1 being most preferable):

- i. *Industrial Districts* if not adjacent to a park, residential district or historic district.
- ii. *Public Rights of Way* areas if not adjacent to a park, residential district or historic district.

b. Least Preferable Locations

The following are the least preferred locations for new Personal Wireless Service Facilities in the order of preference (1 being least preferable).

- i. *Residential Districts*
- ii. *Parks*
- iii. *Historic Districts or in close proximity to a historic building*
- iv. *Scenic ways*

c. Historic Location Evaluation.

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In the event that the Applicant proposes a location which is within an Historic District or within one hundred fifty (150) feet of an historic building (listed in the Massachusetts Historic Register) located outside of an Historic District, the Applicant shall submit as part of its Application an Historic Location Evaluation. The Historic Location Evaluation shall include, at a minimum:

- i. a description of Applicable Law pertaining to the placement of the Personal Wireless Communications Facilities at the proposed location (e.g., Town bylaws and regulations, State Historic Preservation Office requirements, and FCC regulations and agreements to implement Section 106 of the National Historic Preservation Act), including any claimed exemption from any requirement;
- ii. documentation of all due diligence steps taken to comply with such Applicable Law;
- iii. any formal communications (letters, reports, emails, for example) from local, state and federal organizations (including any Town Historic District Commission) regarding the proposed facilities and location; and
- iv. an Alternative Location Evaluation, as described below.

Applicants shall avoid pole locations that would be directly in front of and on the same side of the Public Right of Way as an historic building listed in the Massachusetts Historic Register.

d. Alternative Location Evaluation.

Applicants shall avoid pole locations that would be:

- i. directly in front of a residential dwelling or commercial building;
- ii. on a scenic road; or
- iii. at an entry point to a village center (if so designated by the Planning Department).

If the proposed pole location is one of the above locations, the Applicant shall submit as part of its Application a documented evaluation of alternative locations, including whether an alternative location avoids the above concern and whether an alternative location is technically feasible to meet the service objectives of the proposed location. The Applicant shall explain and document whether any alternative pole location evaluated is unavailable based upon a pole owner documented determination in accordance with pole attachment license agreement terms and conditions or technically infeasible due to distance, line of sight or other factors. Such evaluation shall be supported by factual statements, documents, reports and other information (which may include propagation maps and drive test results) and an explanation of the criteria applied to determine whether an alternative location is technically feasible. The Board reserves the right to suggest that the Applicant evaluate an alternative location and consider the use of such alternative location if the Applicant has the right to use the alternate location on

reasonable terms and conditions and the alternative location is a technically feasible means of meeting the proposal's service objectives.

e. Collocation Preference.

It is the Town's strong preference that the Applicant collocate the proposed Personal Wireless Service Facilities on existing or replacement Utility Poles (in substantially the same location), or Town-Owned Infrastructure. The Applicant shall provide a description of efforts to collocate the equipment on existing or replacement Utility Poles. A good faith effort to collocate is required and evidence of such efforts must be included within the Application.

If the Applicant contends that Personal Wireless Service Facilities cannot feasibly be placed on existing Utility Poles or replacement poles in substantially the same location, the Applicant shall explain and document why an alternative Utility Pole location is not technically feasible or otherwise unavailable.

f. Replacement Poles.

If an Application requires replacement of an existing Utility Pole to accommodate proposed Personal Wireless Service Facilities, the replacement pole shall be designed to resemble the appearance and dimensions of existing Utility Poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible (taking into account pole owner control of its Utility Poles). Any licensing of the use of a pole which is Town-Owned Infrastructure will require the replacement of the existing Town-owned pole and such other specifications as determined by the Director of Public Works. These specifications will be part of the license agreement between the Applicant and the Town.

g. New Poles.

Subject to Exceptions under these Standards, no new Pole whose primary purpose is to support Personal Wireless Service Facilities shall be installed within the Public Rights of Ways of the Town unless authorized by the Select Board. Only pole mounted antennas and strand mounted antennas shall be permitted in the Public Rights of Way. Towers are prohibited in the Public Rights of Way. An Applicant proposing to construct or install a new pole primarily for wireless communications use must submit a request for an Exception and demonstrate that (1) attachment to an existing Utility Pole or replacement Utility Pole at its existing location is not a technically feasible alternative; (2) denial of the proposed location would effectively prohibit its provision of Personal Wireless Services; or (3) another ground for granting an Exception applies.

An Exception shall be required to place a new pole that is not a replacement for an existing pole in the Public Rights of Way. If an Exception is granted for placement of a new pole in the Public Rights of Way:

- i. To the maximum extent feasible (taking into account ownership of the new pole), the new pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style, with the

exception of any existing pole designs that are scheduled to be removed and not replaced.

- ii. Unless otherwise ordered by the Select Board, such new poles shall be subject to a height limitation of forty (40) feet unless a taller height is permitted by the Board.
- iii. For all wooden poles, conduit and cables attached to the exterior of poles shall be mounted flush thereto.
- iv. A new pole shall not require the replacement of adjacent poles or require the rearrangement of existing facilities of the pole owner, the Town or another entity attaching to adjacent poles.

h. Underground Utility Area.

New poles shall not be installed for wireless communications purposes in a Public Way location where existing cable, electric or telecommunications facilities in the Public Way are located underground. If there is an existing Utility Pole or Town-Owned Infrastructure in such a location, a party wishing to attach Personal Wireless Service Facilities to such Utility Pole or Town-Owned Infrastructure must obtain a Grant of Location and permission from the Utility Pole owner or a license agreement from the Town.

i. Prohibited Pole Locations.

Personal Wireless Service Facilities are not permitted to be installed on Double Poles or on Utility Poles which are scheduled for replacement or removal without replacement.

j. Other Location Standards.

Personal Wireless Service Facilities:

- i. shall not be placed within the travel way of the sidewalk to impede ADA accessibility. Sidewalk travel ways shall maintain a minimum of 4 feet in width to accommodate the snow clearing vehicles along the sidewalks.
- ii. shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a Right of Way.
- iii. shall be located in a manner that does not obstruct the legal use of a Right of Way by a utility, cable or telecommunications service provider.
- iv. shall be located in a manner that complies with Americans with Disabilities Act (ADA) standards and requirements, including but not limited to sidewalk access and clearance requirements. The Applicant shall demonstrate factually in its Application that the proposed construction meets ADA requirements when in the Public Rights of Way.

- v. shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support Structure.
- vi. shall be located in alignment with existing trees, utility poles, streetlights, and buildings.
- vii. shall be located equidistant between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
- viii. shall be located with appropriate clearance from the existing facilities of a utility, cable or telecommunications service provider.
- ix. shall be located not within sight triangles at street intersections.
- x. shall not be located directly in front of any existing residential, commercial or industrial structure.
- xi. shall, to the greatest extent possible, be located in line with existing lot lines or an equidistance from any two existing structures. In areas of the Town where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.



k. Use of Town-Owned Infrastructure.

Attachment to Town-Owned Infrastructure in the Public Rights of Way shall require, in addition to a Grant of Location, a license agreement with the Town. A form of license agreement is available from the Office of the Town Manager.

l. Pole Height and Diameter.

- i. Standalone Poles: Unless otherwise ordered by the Select Board, the height of any new pole including its antenna(e) shall not exceed 45 feet
- ii. Wood Poles: Unless otherwise ordered by the Select Board, the height of any replacement wood pole including its antennae shall not exceed 45 feet.
- iii. Antennas shall be located entirely within a shroud or canister type enclosure.

The diameter of the Antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure. The enclosure shall not exceed six cubic feet in volume.

m. Setbacks.

The Board will evaluate whether and to what extent a minimum setback from any residential or commercial property is reasonably necessary where the proposed location is not an existing or replacement Utility Pole. The minimum setback distance may take into account a safe distance based upon the height of the proposed facilities, any other safety considerations, and proximity to residential or commercial property front entrances and windows, based on safety and aesthetic considerations.

VISUAL IMPACT ANALYSIS

- a. The Applicant shall provide “before and after” photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as close proximity to the site, elevation relative to the site and the existence or absence of a clear line of sight between the proposed location and their location.
- b. The photographic images shall depict the height at which the proposed facility will stand when completed, including all portions of proposed attachments to the support Structure, including but not limited to the support Structure, all antennas, transmitters, and any ground-mounted equipment.
- c. If any multiple antennas are proposed to be attached to a single Structure, the Select Board may limit the number of antennas and related equipment so attached in order to prevent or limit negative visual impacts and protect the safety of the public.

STRAND-MOUNTED ANTENNAS

The requirements pertaining to strand-mounted antenna cover aesthetic, public safety and public convenience considerations.

- a. Strand-mounted antenna shall only be located between two utility poles on a strand that is parallel to the ground and the edge of the Public Right of Way. Only one strand-mounted antenna shall be allowed in each span.
- b. Strand-mounted antenna shall not be located on any strand between two utility poles that crosses the Public Right of Way.
- c. All strand-mounted antenna shall be located entirely within the limits of the public right of way.
- d. Strand-mounted antenna shall be placed as close as possible to the nearest utility pole, and in no event more than five (5) feet from the pole, subject to any requirements of the utility pole owner for safety clearance.
- e. Each strand-mounted antenna shall not exceed a maximum volume of three (3) cubic feet comprised of radio, antenna and supplementary equipment, but excluding mounts and connectors. No strand-mounted component shall exceed eighteen (18) inches in diameter, and no portion shall extend greater than a distance of twelve (12) inches measured from the strand on which it is mounted.
- f. An Applicant must demonstrate that the supporting poles are appropriately sized and have sufficient structural strength to accommodate the additional material load per the National Electrical Safety Code.
- g. An Applicant must demonstrate that the proposed location does not involve a double pole or a pole scheduled to be replaced or removed without replacement within twelve (12) months.
- h. Strand-mounted antenna shall not be installed directly below pole-mounted streetlight fixtures.
- i. Electric service for all strand-mounted antenna shall be fed from a pole-mounted power supply.
- j. All new installations, upgrades, or modifications of strand-mounted antenna capable of any radio frequency emission shall comply with radio frequency regulations of the FCC.
- k. All conductive parts of the strand-mounted antenna assembly shall be bonded together and grounded to the pole ground.
- l. Strand-mounted antenna shall be installed with good workmanship and shall not interfere with climbing and maintenance of the Utility Poles.
- m. A service disconnect switch shall be installed for all power supplies for the purpose of powering the equipment.
- n. Each strand-mounted antenna shall be tagged with an antenna ownership identification tag, RF Notice tag and RF Caution tag.

- o. Clearances shall comply with the National Electrical Safety Code and utility pole owner requirements.
- p. The Town shall have the right, but not the obligation, to inspect strand-mounted antenna and may include such inspection as part of any annual inspection of the Grantee's facilities located in the Public Ways pursuant to a Grant of Location.
- q. Strand-mounted antenna shall be compatible with the color requirements under Subsection 19(e) of this Section B of these Regulations.

STANDARDS AND REQUIREMENTS FOR PERSONAL WIRELESS SERVICE FACILITIES ATTACHMENTS

- a. Surface Area of Antenna.

In general, the personal wireless service antenna, including antenna panels, whip antennas or dish-shaped antennas, shall be as small as practicable, taking into account technical feasibility and aesthetic and public safety considerations.

- b. Size of Above Ground Personal Wireless Service Facilities.

The total combined volume of all above ground equipment and appurtenances serving a personal wireless service antenna shall be as small as practicable, taking into account technical feasibility and aesthetic and public safety considerations.

- c. Lowest Point Above Grade.

The operator of Personal Wireless Service Facilities or Small Wireless Facilities shall, whenever possible, locate the base of the equipment or appurtenances at a height of no lower than eight (8) feet above grade. No facilities may be installed at grade without the approval of the Director of Public Works and the Select Board.

- d. Height.

Unless otherwise ordered by the Select Board, the top of the highest point of the Utility Pole shall not exceed forty (40) feet above ground level and the combination of the height of the utility pole and personal wireless service antenna extension shall not exceed forty-five (45) feet above ground level.

- e. Color.

To the maximum extent practicable, the color of the Personal Wireless Service Facilities shall be similar to and blend with (a) the existing equipment on the Utility Pole and/or on other nearby Utility Poles; (b) the color of the Utility Pole; or (c) a color reasonably satisfactory to and directed by the Town. The Personal Wireless Service Facilities shall have non-reflective

materials. Any applicable Planning Department design guidelines shall be taken into account in applying these criteria. Except when Personal Wireless Service Facilities are attached to a wood pole, poles and all equipment must be the same color and finish as surrounding streetlight poles or third party poles such as Utility Poles; (d) All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets. Notwithstanding the foregoing, in the case of existing wood utility poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum. Equipment enclosures shall be as small as possible, but in no event larger than 28 cubic feet in volume.

f. Shielding of Wiring.

Any wiring on the pole must be covered with an appropriate cover or cable shield.

g. Mounting.

Antenna elements and equipment shall be mounted as close to the surface of the pole as technically feasible.

h. Antenna Panel Covering.

Personal Wireless Service Facilities antenna shall include a radome, cap or other antenna panel covering or shield and shall use a color that blends with the color of the utility pole on which it is mounted.

i. Signage.

Other than signs required by federal or state law, Personal Wireless Service Facilities shall not have signs installed thereon. Identification tags may be utilized in accordance with governmental and/or pole owner requirements. Except as otherwise required under Applicable Law or by a pole owner, Corporate or company names (except for location identification purposes noted below), logos, identifying graphics or other advertisements shall not be painted, embossed, applied or displayed in any manner on the poles, equipment enclosures (boxes, cabinets, etc.), hand hole covers, or other component of the pole. Individual location identification information will be permitted, provided no letter, number, or graphic symbol is taller than one inch in height (unless required under Applicable Law or by the pole owner).

- i. Logos/Decals: The small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the Building Inspector. Small wireless facilities and wireless support structures shall not include advertisements and may only display information required by a federal, state, or local agency. The small wireless facility operator/permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.

- ii. The small wireless facility permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required by law (e.g. radio-frequency (RF) ground notification signs) or the Town. If no cabinet exists, the signage shall be placed at the base of the pole.
- j. Enclosures; Concealment Elements and Stealth Elements.
- i. Wires shall be inside of non-wood poles and wires on wood poles shall be covered with an appropriate cover or cable shield.
 - ii. All cables, wires and connectors must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed on the wireless support structure.
 - iii. All antenna enclosures shall either be mounted to the top of the Utility Pole or other Structure and aligned with the centerline of the Utility Pole or other Structure, or mounted to the side of the Utility Pole or other Structure such that the vertical centerline of the Antenna enclosure shall be parallel with the Utility Pole or other Support Structure with the height of the side mounted Antenna being at a location on the Utility Pole or other Structure noted in the Application and approved by the Select Board, but at least ten (10) feet above ground level at its lowest point.
 - iv. Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the Select Board.
 - v. Applicant shall identify in its Application stealth elements and concealment elements being employed.
 - vi. Concealment elements. Concealment elements mean measures which conceal Personal Wireless Service Facilities or make them appear like something other than Personal Wireless Service Facilities. It is intended that concealment elements be consistent with FCC orders and court decisions regarding the meaning of concealment elements.
 - vii. Stealth Elements. Stealth elements differ from concealment elements. They are other measures intended to minimize the visual impacts of Personal Wireless Service Facilities. They include but are not limited to: (i) radio frequency transparent screening; (ii) approved specific colors; (iii) minimizing the size of the site; (iv) integrating the installation into existing utility infrastructure; and (v) installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.
- k. Wiring and Cabling.

Wires and cables connecting the antenna and/or appurtenances shall be installed in accordance with the National Electrical Safety Code, any other applicable codes in force at the time of installation of the wires and cables, and any stricter standards required by a pole owner.

l. Grounding.

The Personal Wireless Service Facilities shall be grounded in accordance with the National Electrical Safety Code in force at the time of installation of the wires and cables or any stricter standard required by a pole owner.

m. Guy Wires.

No guy wires or other support wires shall be used in connection with Personal Wireless Service Facilities unless the facilities are proposed to be attached to an existing Utility Pole that incorporates guy wires prior to the date that the applicant has applied for a Grant of Location, or unless the use of guy wires or support wires allows for an installation that furthers the objectives of this Policy better than other practical alternatives that do not include the use of such wires. Guy wires shall not interfere with the use of a driveway or the use of sidewalks.

n. Wind Loads.

The proposed Personal Wireless Service Facilities shall be properly engineered to withstand wind loads required by applicable safety codes and pole owner requirements. This requirement may be satisfied if the Applicant provides with its application or pursuant to a condition of approval a certificate of compliance with applicable safety codes and pole owner requirements from the pole owner, or a structural engineering certification provided by a Massachusetts licensed engineer.

o. Number Limitation.

Unless otherwise authorized by the Select Board for good cause shown, only one (1) Personal Wireless Service Provider or carrier-neutral facilities provider shall be allowed to own, attach and/or operate Personal Wireless Service Facilities which are attached to a single Utility Pole or strand-mounted. This provision does not prohibit a carrier neutral host from allowing one or more Personal Wireless Service Providers to use its facilities. The owners or operators of collocated attachments are jointly responsible for compliance with the FCC's aggregate radio frequency emissions regulations and are required to demonstrate that their facilities will be in compliance within thirty (30) days after the construction of the additional attachment to the Structure.

p. Obstructions.

Each component part of the Personal Wireless Service Facilities shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, cause safety hazards to pedestrians and motorists or otherwise incommode the public's use of the Public Right of Way. Nor shall any such component obstruct intersection visibility. The Personal Wireless Service Facilities shall not interfere with access to or operation of streetlights, fire alarm cables,

municipal fiber optic facilities, fire hydrants, fire alarms, fire stations, fire escapes, water valves and facilities, sewer facilities, underground vaults, valve housing structures, or any other public health or safety facilities. The Personal Wireless Service Facilities shall not interfere with snow plowing, sidewalk clearing, leaf removal or the maintenance of public shade trees. The maintenance of the Personal Wireless Service Facilities shall not cause any such obstructions.

q. Traffic Safety.

All Personal Wireless Service Facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic and pedestrian safety. Personal Wireless Service Facilities shall not project over the public right of way or sidewalk (beyond the curb) in such a manner and at a height that will incommode the public use of the Public Right of Way or sidewalk. The Applicant shall comply with applicable traffic control standards at all times during construction or installation.

r. Lighting.

The Grantee's Personal Wireless Service Facilities shall not produce any lighting or blinking light that is not required by federal or state law, unless otherwise permitted by the Select Board. New small wireless facilities and wireless support structures shall not be illuminated, except in order to comply with state or federal law, or unless illumination is integral to the camouflaging strategy such as a design intended to make them look like a street light pole.

s. Noise

The Applicant shall describe any cooling system that it plans to deploy. Only a passive cooling system will be allowed in a residential area. In the event that a fan is needed, the Grantee shall use a cooling fan with a low noise profile. The Grantee shall employ Personal Wireless Service Facilities that comply with any Town noise bylaw or other reasonable noise level requirement of the Town as is technically feasible and commercially practicable in light of industry standards and equipment specifications. In the event that its facilities fail to comply with such ordinance or requirement, the Grantee shall immediately take all steps necessary to correct such non-compliance, including providing such equipment that is reasonably necessary to bring the facilities into compliance with such ordinance or requirement. The Grantee shall promptly shut down and repair any equipment that is not in compliance.

t. Security.

Each installation shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The Applicant shall provide its written security standards and practices and a written explanation of its standards and practices to ensure adequate security for its Personal Wireless Service Facilities in accordance with current industry practices.

u. Vibration.

The Applicant shall demonstrate that it is capable of promptly shutting down and repairing any equipment that vibrates excessively.

v. Impact on Trees.

The Town discourages the installation of Personal Wireless Service Facilities within the dripline of a Public Shade Tree (as defined under Applicable Law) or other Town-owned tree. If there is no alternative to the installation of such facilities within the dripline of a Public Shade Tree or other Town owned tree the installing party must comply with G.L. c. 87, and/or the Town Trees ordinance in Chapter 221 of the Town Code and obtain a Tree Permit from the Tree Warden. The Town will not permit the pruning, cutting, or damage to a Public Shade Tree or other Town-owned tree to facilitate the installation of Personal Wireless Service Facilities unless approved by the Tree Warden. Tree “topping” or the improper pruning of trees is prohibited. Any proposed as defined under Applicable Law) pruning or removal of trees, shrubs or other landscaping already existing in the Right of Way must be noted in the Application and must be approved by the Town Tree Warden.

w. Non-interference with other Users of Utility Pole or Other Existing Structure.

The Grantee and its facilities shall not interfere with the operation and maintenance of any wires, cables or equipment already attached to a Utility Pole or other existing Structure, including but not limited to streetlights and cable, electrical and telecommunications facilities (including any Town communications facilities such as fiber optic cables and copper alarm transmission lines). Signage already attached to a pole shall not be moved without the prior written consent of the Town department that controls the placement of the signage.

x. Fire Safety Measures and Requirements.

The Applicant shall include in its Application a written explanation of all fire safety measures that it will implement. Such measures may include, but are not limited to, the automatic or other means of shut off of electric power to the Personal Wireless Service Facilities, training of employees and contractors, the provision of information as may be requested by the Fire Chief or designee, the provision of emergency contact information to the Fire Chief or designee, proof of compliance with all applicable fire codes and pole owner requirements related to fire safety, and the use of setbacks from buildings.

y. Electric Power Meters.

The Applicant shall state whether the use of an electric power meter is required by the electric distribution company or if a non-metered rate is available. If a non-metered rate is available, the Applicant shall utilize a non-metered rate in order to reduce visual clutter and reduce the risk of vandalism at the proposed location. The Applicant is not required to request that the electric distribution company enter into a special contract for the provision of an unmetered rate.

z. Radio Frequency Emissions; Power Densities.

- i. In accordance with federal law, the Town shall not regulate the placement, construction, and modification of Personal Wireless Service Facilities on the basis of the environmental effects of radio frequency emissions (“RFE”) to the extent that such facilities comply with the FCC’s regulations concerning such emissions. As part of its Application, the Applicant shall provide a certification by a qualified radio frequency engineer that the proposed facility will comply with such FCC regulations.
- ii. A Grantee shall submit within ninety (90) days after beginning operations under a Grant of Location an independent engineering report that demonstrates whether its Personal Wireless Service Facilities are in compliance with the FCC’s RFE regulations. The report shall consider whether cumulative RFE are present. Thereafter, annual RFE monitoring is required for all sites by an independent radio frequency engineer to be hired by the Grantee at the Grantee’s expense. Test results will be submitted to the Town Department of Public Works as soon as available, but not later than the close of the calendar year. Annual testing of RFE shall be required to ensure continual compliance with the FCC RFE regulations, including aggregate emissions requirements. In the event that FCC RFE limits are exceeded based upon annual RFE monitoring, the Grantee shall bring the Personal Wireless Service Facilities into compliance as soon as practicable, but in no case later than thirty (30) days after receipt of the above test results, and certify such compliance to the Town, or, at the Grantee’s election, Grantee shall shut down the operation of the Personal Wireless Service Facilities within thirty (30) days of receipt of such test results. The failure to comply with these requirements shall result in the termination or modification of the Grant of Location.
- iii. In addition, for each Personal Wireless Service Facilities location, the Town shall have the right, but not the obligation, to employ a qualified independent radio frequency engineer to conduct random and unannounced tests of the Grantee’s Personal Wireless Service Facilities installations located within the Town to certify their compliance with all FCC RFE regulations as they apply to exposure of the general public. The cost of such tests shall be paid by the Town, provided that if any such test establishes that the Personal Wireless Service Facilities are not in compliance with such FCC RFE regulations, the Town shall provide the test results to the Grantee, and Grantee shall pay the costs of such test. In the event that FCC RFE limits are exceeded, based upon such tests, the Town shall provide the test results to the FCC and request its review of RFE for compliance with its RFE regulations. [The Grantee shall bring the Personal Wireless Service Facilities into compliance as soon as practicable, but in no case later than thirty (30) days after receipt of such test results, and certify such compliance to the Town, or, at Grantee’s election, Grantee shall shut down the operation of the Personal Wireless Service Facilities within thirty (30) days of receipt of such test results. The failure to comply with these requirements shall result in the termination or modification of the grant of location.]

Commented [AM2]: This section is flagged for further discussion. Some communities have included a right to test provision. Many have not. Discuss action taken if a RFE test fails and is not cured within a reasonable time.

aa. Back-up Generators.

Backup generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m. Back-up generators shall be portable.

PEDESTRIAN PATH AND AMENITY ZONE

- a. The sidewalk area of public space is typically delineated into the pedestrian path and the amenity zone. The amenity zone is located between the pedestrian path and the roadway and provides access between the two as well as the area for street trees, streetlights and traffic signals, and other functional elements. It is critical that all pedestrian paths are clear to facilitate safe and optimal access and circulation along sidewalks.
- b. Standalone poles shall not be located in the clear pedestrian path
- c. Standalone poles shall be aligned with existing streetlights, third party poles, and street trees as applicable in order to maintain a visual and physical organization of structures within the Public Way, as measured from the center of the base of the pole. When streetlight and street tree alignment are offset within the amenity or curbside zones, prioritize alignment of the small cell facility with streetlights.
- d. All measurements shall be taken from the outer edge of the standalone pole and the infrastructure listed in the following specific limits/prohibitions.
- e. Standalone poles must be placed a minimum of ten feet (10') from existing fire hydrants or buildings' fire connections.
- f. Standalone poles shall be located a minimum of 10 feet (10') from light poles and traffic signal poles.
- g. Standalone poles shall be located a minimum of 3 feet (3') from bicycle racks and shall not impede the attachment of bicycles.
- h. Standalone poles shall be placed a minimum of ten feet (10') from any above grade building face, including bay windows, show windows and building projections or overhangs.
- i. Poles should be located, to the maximum extent possible, to minimize impact on businesses and residential mixed-use development by avoiding placement directly in front of building entrances, alignment with windows, primary entry walks, or delivery zones or entrances.



ACCESS, CIRCULATION AND SIGHT DISTANCES

- a. Safe and functional access, circulation, and clear sight lines are important for pedestrian ease of movement and to maintain unobstructed line of sight among drivers, pedestrians, bicyclists.
- b. Standalone poles shall not obstruct ADA access, including maintaining a clear landing at the top of curb ramps at crosswalks.
- c. Pole placement shall not impede, obstruct, violate, conflict with, or hinder any mode of travel over or access to any public street, bridge, tunnel, highway, lane, path, alley, sidewalk, or driveway, including but not limited to the obstruction of sight lines.
- d. Poles shall be placed consistent with the most current Manual on Uniform Traffic Control Devices and adopted District standards for maintenance of an intersection's sight line triangles.
- e. A minimum of fifteen feet (15') shall be maintained between the pole and the outside edge of the alley or driveway.

STANDARD CONDITIONS

Each Grant of Location order shall be subject to the following Standard Conditions, which shall be incorporated by reference in a Grant of location order:

ANNUAL RE-CERTIFICATION AND AFFIDAVIT

- a. Each year on July 1 the party responsible for the equipment maintenance shall submit an affidavit which shall list, by location, all small cell wireless installations it maintains within the Town of Andover by location, and shall certify: (1) each such installation that remains in

use; (2) that such in use installations remain covered by insurance, as required under the Policy; and (3) each such installation which is no longer in use.

- b. The party responsible for the equipment maintenance shall pay an annual re-certification fee for each installation which remains in use. Such fee shall be covered by the \$270 per location annual fee unless the Town has adopted a different fee schedule.
- c. Any small cell wireless installation which is no longer in use shall be removed by the party responsible for its maintenance within sixty (60) days of receipt of the annual re-certification affidavit, at that party's expense.
- d. Any small cell wireless installation which is not removed within sixty (60) days after being listed as no longer in use in the annual re-certification affidavit shall be subject to removal by the Town at the expense of the Grantee.
- e. Where such annual re-certification has not been timely submitted, or equipment no longer in use has not been removed within the required sixty (60) day period, the Select Board may notify the Grantee of its intent to revoke the grant of location and direct the removal of any unused Personal Wireless Services Facilities by or at the expense of the Grantee.

EXPIRATION OF PERMIT FOR NON-USE

If the Grantee fails to construct and operate the approved Personal Wireless Service Facilities within one hundred eighty (180) days after such acceptance, the Town may notify the Grantee of its intent to revoke the grant of location and direct the removal of any unused Personal Wireless Services Facilities. Within one hundred eighty (180) days of the date of such notice, the Grantee shall have the opportunity to cure this failure or provide good cause for the failure based upon factors outside of its control.

ABANDONMENT AND REMOVAL

Any Personal Wireless Service Facilities that are not operated or used for Personal Wireless Services for a period of one hundred eighty (180) consecutive days or more shall be deemed abandoned. The Town shall have the right to notify the Grantee that such abandoned facilities must be removed within thirty (30) days of the date of such notice. At the time of removal, the Personal Wireless Service Facilities and all associated debris shall be removed. If the Grantee does not comply with a removal notice, the Town shall have the right to remove the Personal Wireless Service Facilities at the expense of the Grantee.

NON-EMERGENCY REPAIRS

Non-emergency repairs shall be performed as follows: (1) at least forty-eight (48) hours' advance notice shall be provided to the Director of Public Works and the Police Department; (2) a police detail may be required at the sole cost and expense of the Grantee; and (3) work shall be performed on weekdays during hours designated by the Director of Public Works.

MAINTENANCE OF PERSONAL WIRELESS SERVICE FACILITIES

All equipment and other improvements to be constructed, installed, operated and maintained shall be maintained in a manner that is not detrimental or injurious to public health and safety and general welfare and in a manner that ensures that the aesthetic appearance of Personal Wireless Service Facilities is continuously preserved and substantially the same as shown in the approved plans. The Town shall have the right, but not the obligation, to periodically inspect the installed Personal Wireless Service Facilities and may include the reasonable cost of such inspections in publicly established annual recurring charges applicable to such facilities.

REMOVAL OF UTILITY POLE

In the event that a Utility Pole is being removed and replaced by the pole owner(s), the Grantee shall transfer the Personal Wireless Service Facilities to the replacement pole in accordance with the pole attachment agreement(s) between the Grantee and the pole owner(s). In the event a pole is not a double pole, and the pole owner no longer needs the pole for its own use and is proposing to remove the pole and not replace it, the Grantee shall have the right to remain on the pole pursuant to its Grant of Location, but shall reasonably cooperate in moving its equipment to another available and technically suitable pole if one is available and approved for the attachment of its Personal Wireless Service Facilities and the Grant of Location allowed for the removed pole location shall terminate.

LICENSES AND PERMITS

The Permittee must obtain all other permits required by law. A Grant of Location is subject to this condition.

PERFORMANCE BOND

- a. The Grantee shall maintain at its sole cost and expense a performance bond running to the Town, with good and sufficient surety licensed to do business in the Commonwealth of Massachusetts in the sum of Ten thousand dollars(\$10,000) for each location. Said bond shall be conditioned upon the faithful performance and discharge of all obligations of the Permittee under its Grant of Location. It is intended that the bond be adequate to cover the cost of removal of Grantee's facilities and any necessary site restoration. The amount of the performance bond is subject to change based on changes in estimated costs and any change will be posted publicly and made available by the Board.
- b. The performance bond shall remain effective during the period in which the Grant of Location is in effect as well as through the time of removal of all of the Grantee's Personal Wireless Service Facilities provided for in the Grant of Location, and shall be conditioned that in the event that the Permittee shall fail to comply with any one or more of its obligations, the Town shall recover from the surety of such bond all damages suffered by the Town as a result thereof.
- c. Said bond shall be a continuing obligation under a Grant of Location. In the event that the Town recovers from said surety the Grantee shall take immediate steps to reinstate the performance bond to the appropriate amount required above. Neither a performance bond

accepted by the Town, nor any damages recovered thereunder, shall limit the liability of the Grantee.

INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall, at its sole cost and expense, indemnify, defend, and save harmless the Town and all of the Town's officers, agents and employees from and against all suits and claims of liability of every name and nature, including attorney's fees and costs of defending any action or claim, for or on account of any claim, loss, liability or personal injury or death or damage to property of the Town or any person, firm, corporation or association related to, arising out of or resulting from any act, omission, or negligence of the Grantee, its officers, agents, representatives, employees, permittees, licensees, guests and invitees, or by its contractors and their officers, agents, representatives, employees, permittees, licensees, guests and invitees related to, arising out of or resulting from the construction, installation, maintenance, operation and/or removal of Personal Wireless Facilities under a Grant of Location from, and any related license agreement with, the Town, and/or its/their failure to comply with the terms and conditions of the Grant of Location and/or any related license agreement, except to the extent such claims were caused by the Town's gross negligence or willful misconduct. Such claims shall include, but not be limited to, claims arising from the release or threat of release of oil or hazardous materials, substances or wastes, or assessing, containing, removing, or disposing of the same, claims arising from Radio Frequency Emissions and claims arising from the Grantee's failure to provide adequate safety and security at the location of its activities authorized by the Grant of Location and any related license agreement. These indemnification provisions are independent of, and shall not be deemed to be limited, released, waived or modified in any respect by reason of, any surety or insurance provided by the Grantee pursuant to the Grant of Location or any related license agreement with the Town. These indemnification provisions shall survive the expiration or termination of the Grant of Location and any related license agreement.

INSURANCE

At its sole cost and expense, the Grantee shall carry insurance at minimum in the types and amounts as described in this section:

a. Commercial General or Public Liability Insurance.

Grantee shall carry appropriate commercial general or public liability insurance which shall include coverage for bodily injury and personal injuries as to third persons based upon the uses and equipment placed on or at the location(s) on which Personal Wireless Service Facilities, including related Structures, will be installed or constructed ("Location(s)") in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and a minimum of Two Million Dollars (\$2,000,000) in the aggregate, or such higher amounts of insurance coverage that are prudent given the risks inherent in the Grantee's activities on and use of the Location(s) or that the Town shall reasonably require from time to time. This insurance must be primary and non-contributory with respect to the losses for which the Grantee is responsible.

b. Insurance for Town Property.

The Grantee shall obtain and furnish proof of sufficient property damage (fire, vandalism, structure, etc.) insurance for Town property, i.e., any Town-owned Infrastructure, equipment, or other property at, on or within the Location(s), in at least the minimum amount of One Million Dollars (\$1,000,000) per occurrence and a minimum of Two Million Dollars (\$2,000,000) in the aggregate or such higher amounts of liability insurance coverage that are prudent given the risks inherent in the Grantee's activities and use of the Location(s). This insurance must be primary and non-contributory.

c. Fire and Casualty Insurance.

The Grantee shall carry fire and casualty or "all risk" liability insurance for its own equipment in amounts that are prudent given the risks inherent in the Grantee's activities and use of the Location(s). This insurance must be primary and non-contributory.

d. Workers' Compensation.

The Grantee and its contractors shall also provide evidence of sufficient Workers' Compensation insurance as required by Massachusetts law.

e. Additional insurance.

The Grantee should consider obtaining any additional insurance to cover its risks inherent in its activities on and use of the Location(s), including, but not limited to, Professional Services, Motor Vehicle, Construction/Completed Operations, Vandalism, Terrorism, Flood, Wind, Hail, etc.

f. The Grantee must purchase a notice endorsement such that the Town is provided no less than thirty (30) days' prior notice of cancellation for non-payment reasons and no less than ten (10) days' prior notice for cancellation for payment reasons. The Grantee shall also obtain an endorsement for each location explicitly naming the "Town of Andover" as an additional insured on all applicable policies except Workers' Compensation. Such endorsements shall be evident on any certificates of insurance provided to the Town and may be submitted by e-mail.

g. The Grantee shall furnish to the Town Certificates of Insurance and proof of the required endorsements issued by an insurer or insurers qualified to do business in Massachusetts with an A.M. Best rating of no less than A, Class VI or higher or an equivalent Standard & Poor's Rating of AA+/- or higher upon the issuance of a Grant of Location and the execution of any related license agreement and updated annually during the term of the Grant of Location and License. The Grantee shall provide such Certificates of Insurance and proof of required endorsements to the Town office designated in the Grant of Location. The Town shall have the right to review the Grantee's required insurance policies.

h. Such insurance coverage shall commence no later than the date on which construction of Personal Wireless Service Facilities is commenced. Failure to maintain such insurance during the period in which the Grant of Location and any related license agreement is in effect shall be grounds for revocation of such Grant of Location and license agreement.

AS-BUILT DRAWINGS

The Grantee shall submit as-built drawings to the Town within thirty (30) days after installation of its Personal Wireless Service Facilities. As-built drawings shall be in an electronic format acceptable to the Town which can be linked to the Town's Geographic Information System (GIS). To the extent practicable, as-built drawings should be able to be incorporated into the GIS layers.

CONSTRUCTION IN COMPLIANCE WITH APPROVED PLANS

The Grantee shall construct, operate and maintain the Personal Wireless Service Facilities in strict compliance with the plans approved and incorporated in its Grant of Location order. Such compliance shall be subject to annual certification by the Grantee and review by the Town.

CURRENT CONTACT AND SITE INFORMATION

The Grantee shall submit with its Application and at all times maintain current basic contact and site information on a form to be supplied by the Town Clerk's Office. Such information shall include, but is not limited to: (a) name, address, email address and twenty-four (24) hour local or toll-free and cellphone numbers of the Grantee, the owner, operator and agent or person responsible for maintenance of the Personal Wireless Service Facilities; (b) the owner of the Personal Wireless Service Facilities; and (c) emergency contacts in the event of emergency situations. Notice of any change in contact information shall be provided within three (3) days of the effective date of such change. Notice of any change in name of the Grantee shall be provided to the Town Clerk's Office and any signage, insurance and bonds shall be updated concurrent with the date of the name change.

RELOCATION

A Grantee shall promptly remove and relocate, at no charge to the Town, any facilities or equipment if the removal of a Utility Pole or Structure is made necessary by a change in the grade, alignment or width of any public way, or by construction, maintenance or operation of any Town facilities.

DIG SAFE; NJUNS

The Grantee shall comply with all applicable Dig Safe statutes and regulations. The Grantee shall join the National Joint Utilities Notification System ("NJUNS") and participate in the double poles removal process in accordance with NJUNS practices. It shall provide the Town Clerk's Office and the Department of Public Works with proof of its joining NJUNS. In the event that the Town requests periodic meetings with pole owners and attaching entities, the Grantee shall have a representative attend or participate virtually.

ASSIGNMENT

The Grant of Location shall not be assigned by the Grantee without the prior express written consent of the Select Board.

STREETSCAPE REDESIGN

If a streetscape is redesigned in the future, including, but not limited to the location and type of streetlights, a Grantee will be required to remove its facilities at its own cost and apply to reinstall its facilities in accordance with this Policy and the new streetscape.

AMENDMENTS TO POLICY

This Policy may from time to time be amended by the Select Board in accordance with Applicable Law.

SEVERABILITY

The provisions of this Policy are severable. In the event that any part of this Policy is declared invalid by a court of competent jurisdiction, the validity of the remaining parts of this Policy shall not be affected.

EFFECTIVE DATE

This Policy will be effective as of the _____ day of _____, 202_.

This Policy may be modified from time to time by the Select Board.

MASSACHUSETTS CITIZEN PLANNER TRAINING COLLABORATIVE WEBINAR

OCTOBER 27, 2020

RETAINING LOCAL CONTROL OVER WIRELESS FACILITIES SITING:

LEGAL AND PLANNING CONSIDERATIONS

ALAN MANDL, ESQ.

FERRITER, SCOBBO & RODOPHELE PC

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Watch that Shot Clock!

This legal overview does not reflect the position of any client on any issues. It does not constitute legal advice or create any attorney-client relationship. The law may apply differently to different factual situations. Because the law may change over time, municipal officials should seek advice from Town Counsel before acting on any specific matter.

BACKGROUND

The federal Telecommunications Act of 1996 (“FTA”) created limitations on local permitting of wireless communications facilities (“WCF”). Since 1996, developments in federal law, by statute, FCC orders and court decisions, have further encroached on local land use authority and affected permitting procedures.

During this same time frame, the demand for wireless services has increased dramatically with the growth in data and video uses. In many instances, residents have replaced landline phones with wireless and are dependent upon wireless technology for everyday use as well as emergencies. Public safety officials also may depend upon adequate wireless coverage and capacity.

Wireless networks have evolved through the use of small cells to increase coverage and capacity in limited geographic areas where cell towers would not meet these needs. Distributed antenna systems (DAS) were early users of the public ways as they augmented macro cell networks. 5G technology requires a proliferation of small cells. Thus, there has been an uptick in the demand for attachment locations in the public ways, such as electric utility and streetlight poles.

Local permitting of wireless is no longer limited to zoning permits and historic district commission certificates. It now includes grants of location to occupy space in the public ways. And the FCC, supported by the federal court to date, has mandated wireless access to municipally-owned streetlights and traffic lights in the public ways, subject to requirements and limitations.

Public concerns about the environmental and health effects of radio frequency emissions (RFE) from WCF have accompanied the current and projected expansion of WCF deployments. This type of concern is illustrated by a flyer of the Environmental Health Trust. Several communities have adopted resolutions supporting a ban on 5G facilities. In many communities there is grassroots opposition to 5G deployments and other wireless infrastructure in sensitive locations.

Wireless has been called a LULU. Locally unwanted land use. Or is it a locally useful land use? Both? Municipal officials are squarely in the middle of the debate about wireless land use.

Municipal officials are tasked with melding traditional local land use policies with federal limitations on their land use authority and adhering to federal requirements superimposed on their permitting procedures.

This discussion will address some basic questions facing a local permitting authority and municipal staffs. They include:

- What can I do? What am I prohibited from doing?
- What procedures are required? How will these procedures be implemented?
- How much time do I have under federal law to issue a decision?
- Wireless is very technical-how do I evaluate a complicated application?
- What information should the applicant be required to provide?
- How do I deal with local opposition to all manner of WCF?
- What steps can be taken to maximize local land use control?

DEVELOPING WIRELESS PERMITTING PROCEDURES AND STANDARDS IS AN IMPORTANT STEP TOWARD MAXIMIZING LOCAL LAND USE CONTROL OF WCF

It is incorrect to generalize that all local authority over wireless land use has been taken away by the federal government. Updating wireless permitting procedures and standards in light of federal limitations and requirements is a key step toward maximizing local land use control.

NO STALLING ALLOWED: FCC PROHIBITION OF EXPRESS AND DE FACTO MORATORIA

The task of updating wireless permitting procedures and standards has been complicated new federal laws and recent decisions of the FCC. Updating procedures and standards has become a moving target due to these changes in law. In August 2018, the FCC issued an order banning express and *de facto* moratoria, with very narrow exceptions. In August 2020, the moratoria ban was upheld by a federal court. *City of Portland v. FCC*, 969 F.3d 1020 (9th Cir.2020). The near complete ban on moratoria represented a change in federal policy. It places importance on acting to update wireless permitting procedures and standards without undue delay.

GETTING STARTED

Municipalities should first review their existing wireless permitting practices: all permits needed in order to construct WCF, including the state and local laws that confer permitting authority, which officials grant each type of permit, the current application process (including forms, fees and timeline). This information is relevant because of limitations under federal law on the time frame for acting on all permits needed for construction of the wireless facilities. Also, it is important to understand the federal limitations on permit application fees and other non-recurring and recurring fees in the absence of cost study support for higher fees in the aggregate. This review will also identify municipal staffs that deal with one or more required permits.

What permits should be required: Municipalities may be used to zoning permit procedures for WCF in the form of cell towers or attachments to buildings, where the FTA has been a fact of life since 1996. Federal laws also apply to other types of permits, such as historic district commission certificates and grants of location to place facilities in the public ways. These types of permits are typically issued by different permitting authorities- planning and zoning boards deal with zoning, historic district commissions address requests for a certificate, and petitions for the use and occupancy of the public ways come before Boards of Selectmen, Town Managers and City Councils. A municipality will need to decide on the appropriate permit and permitting for wireless facilities in the public ways. Some communities follow grant of location permitting for WCF in the public ways, some follow a special permit approach.

In what form should WCF permitting procedures and standards be adopted? Another threshold question is how updated WCF permitting procedures and standards should be adopted: bylaw and code amendments, new wireless policies or regulations issued pursuant to authority to act under state law, and bylaw and code sections.

One approach is the authorization of policies and regulations pursuant to a bylaw or code provision. Given changes in law and the desire to modify practices after gaining more permitting experience, it may be easier to revise a policy or regulation than a bylaw or code section.

WHAT CAN AND CANNOT BE DONE?

Learn about the requirements under federal statutes: 47 U.S.C. §§253, 332(c)(7)(B), 1455

Work with Town Counsel in order to better understand how federal law affects WCF permitting procedures and standards.

Section 253 provides that no local statute, regulation or legal requirement “may prohibit or have the effect of prohibiting” telecom service (including wireless service).

Section 253 also provides that “Nothing in this section affects the authority of a ...local government to manage public rights-of-way or to require fair and reasonable compensation [from service providers] on a competitively neutral and non-discriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

Section 1455 was adopted in 2012 and relates to modifications to existing wireless facilities which are known as “eligible facilities requests.” When an applicant seeks approval of proposed modifications under this statute, the local scope of review is confined to determining whether the proposed modifications qualify. No other land use standards apply. If the proposed modifications qualify, the statute provides that they shall be approved. There is no discretion to impose any conditions other than compliance with generally applicable permit requirements like electrical and building permits and the FCC’s radio frequency emissions regulation.

If the permitting authority fails to act within 60 days of a duly filed application, the applicant may notify the permitting authority that the application has been deemed granted. In this situation, the municipality retains the right to appeal based on the ground that the proposed facilities do not qualify as eligible facilities. An in-depth discussion of eligible facilities requests is not included. It is an important topic that deserves separate discussion.

Section 332(c)(7)(B) is a core set of requirements and limitations. It contains the 5 flagrant fouls that can lead to the ejection of a local permitting decision by a court, usually a federal court

- **First Foul: No unreasonable discrimination among functionally equivalent services**

There must be a showing that (a) competing companies provide functionally equivalent service; (b) the municipality discriminated; and (c) the discrimination was unreasonable

Per court decisions, landline telecom and wireless service providers do not provide functionally equivalent service.

Exenet Systems, Inc. v. City of Cambridge-2020 federal district court decision that a wireless carrier and a distributed antenna system (DAS) do not provide functionally equivalent service.

It is not unreasonable to treat near identical facilities differently depending upon their proposed location (e.g., pole height in a commercial district vs a residential district)

- **Second Foul: No prohibition or effective prohibition of wireless service**

Significant Gap in Coverage Standard: In the setting of towers or attachments to buildings, the federal courts in Massachusetts adopted a two part test for effective prohibition: The burden is on the applicant to demonstrate a rejection of its application, a significant gap in coverage and

that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time to even try. *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30 (1st Cir. 2014). The application of this standard is very fact-intensive. Courts consider facts such as the size of the coverage gap, whether the gap exists on a heavily traveled road, the density of the population affected, the level of service. The court looks only at the applicant-it does not matter if there is another wireless carrier offering complete coverage in the same area.

Materially Inhibit Standard: In September 2018, the FCC issued an order in which it adopted a different standard for determining whether a denial amounts to an effective prohibition. This is the “materially inhibit” the provision of wireless service, taking into account the need for densification of the wireless network, capacity needs and the ability to offer new and improved service. The “materially inhibit” standard was upheld in *City of Portland v. FCC*, 969 F.3d 1020 (9th Cir. 2020).

In a 2020 case, *T-Mobile Northeast LLC v. Town of Barnstable*, the federal district court in Massachusetts applied the “significant gap in coverage standard” and declined to provide the “materially inhibit standard” as to WCF located outside of the public ways. In another 2020 case involving DAS facilities in the public ways, the federal district court did not decide what standard should apply-the applicant failed to satisfy each of the standards.

Planning to Apply the Materially Inhibit Standard: Municipal officials should plan on how to apply the materially inhibit standard to permit applications for WCF in the public ways (for example, how would the materiality of an inhibition be determined? Would a denial have a material effect on the adequacy of wireless service? What geographic area would be taken into account? How many potential users would be affected? If 4G service is offered, would a denial be material if it affected only 5G services?)

- **Third Foul: Action on a permit request must be taken within a reasonable period of time after the request is duly filed**

The federal statute did not provide a measure of “reasonable time.” Some court cases found reasonable a six-month moratorium to enable the adoption of updated bylaws.

The shot clock timeline and process

In 2009, the FCC issued its first shot clock order. It established a number of days after an application is duly filed for action by the permitting authority. Failure to act within the applicable shot clock interval entitles the applicant to go to court with a claim that the city or town violated this requirement.

The shot clock interval is a rebuttable presumption of a reasonable time to act and can be countered by facts demonstrating that the delay was not unreasonable. It is recommended that any causes of delay be documented in order to establish reasonableness in court. **Shot clock intervals will depend upon the type of wireless facility involved.**

When the shot clock interval begins

The shot clock starts to run when an application is duly filed. Officials need to decide how and with what department an application will be filed. A shot clock timekeeper and manager is needed.

Shot clock intervals

Small wireless facilities collocation using preexisting structure 60 days

Small wireless facilities using a new structure 90 days

Important to assure that the proposed WCF satisfy the definition of small wireless facilities

For other WCF, 90 days for a collocation and 150 days for use of new structure

Review for Incompleteness of Application; Notice of Incompleteness

For a small wireless facilities application, the permitting authority has 10 days from the date of filing to provide the applicant with a formal notice of incompleteness, which must include the section of the local law where this information is required. The shot clock is paused until the missing information is provided. For other WCF, 30 days allowed to provide a notice of incompleteness. (see FCC's 2018 small wireless facilities order)

No other ground for incompleteness can be raised later to stop the shot clock.

A failure to provide a notice of incompleteness bars the permitting authority from extending the shot clock interval for rendering its decision.

What to do with Batch Applications

Batch applications are in two forms: several locations included in a single application and separate applications for each location filed at the same time.

A situation may arise where one application in a batch is incomplete. It is advisable to address this situation in policies or regulations. The shot clock can pause on one location due to incompleteness but continue to run as to the other locations in the batch.

Consequences if No Notice of Incompleteness is provided?

The FCC has provided in the case of small wireless facilities that a failure to act by the end of the shot clock interval will result in a violation of both the reasonable time requirement and the ban on effective prohibitions. Legal?

In a very recent 2020 decision in *ExteNet Systems, Inc. v. City of Cambridge*, the federal district court decided that there was no violation of law where the municipality did not provide a timely notice of incompleteness and later denied the application based on its incompleteness. Not what the FCC had in mind!

The only effect of failure to timely notify of incompleteness was a waiver by the municipality of its right to stop the shot clock based on incompleteness of the application.

Sandbagging? Appropriate allocation of risk of incompleteness?

Tolling Agreements

An applicant and permitting authority may enter into a tolling agreement that pauses the shot clock for a specific period of time. The materials include a sample tolling agreement.

All authorizations needed for WCF construction are subject to the shot clock (2018 FCC Order)- the entire approval process is subject to the shot clock intervals (common sense reading is that a shot clock commences to run for a specific permit from the date of a duly filed application for that permit)

- **Fourth Foul: A denial of a permit application must be in writing and based on a statement of reasons supported by substantial evidence in a written record**

An order and statement of reasons need not be in the same document but should be issued close in time to one another.

The reasons for denying the application need not be elaborate or even sophisticated, but simply clear enough to enable judicial review. *T-Mobile South v. City of Roswell*, 574 U.S. 293 (2015).

What is and is not substantial evidence?

If the evidence permits inconsistent conclusions, the court will defer to the decision of the local authority, provided the local board picks between reasonable inferences from the record before it. *VWI Towers, LLC v. Town of North Andover*, 404 F.Supp. 3d 456 (D. Mass. 2019).

“Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, taking into account contradictory evidence in the record.” *Green Mountain Realty Corp. v. Leonard*, 688 F.3d 40 (1st Cir.2012).

Merely reciting a bylaw or regulation standard and stating that the applicant did not meet that standard is not a reason based on substantial evidence. Ignoring a mountain of contradictory evidence or misunderstanding the evidence can undermine the reason for a denial. An action relying upon information in the record that does not qualify as substantial evidence will not be upheld (e.g., unqualified lay person opinion on effect of a proposal on property values not substantial evidence; general objections to wireless facilities is not substantial evidence).

- **Fifth Foul: A municipality cannot regulate the placement, construction and modification of personal wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning radio frequency emissions**

Who will review whether the facilities comply with FCC RFE regulations?

Most often, evidence submitted by the applicant is taken at face value. Lack of expertise to evaluate an RFE engineer's report?

What RFE information can be required?

The scope of local authority has not been mapped out by the FCC. *New York SMSA Limited Partnership v. Town of Clarkstown*, 603 F.Supp.2d 715 (S.D.N.Y. 2009) (the Town may require more information than a statement of compliance).

Municipalities can require proof of compliance with the FCC's RFE regulations. The form of proof may include a qualified engineer's report that the proposed facilities will comply with the FCC's regulations.

Should there be a test of the actual facilities after construction? As opposed to the type of equipment to be installed?

Are there other nearby sources of RFE that create a cumulative risk of non-compliance with FCC regulations?

RFE-Tainted Denials

A denial based in whole or in part on the perceived RFE environmental/health effects will likely be invalid. *Brehmer v. Planning Board of the Town of Wellfleet*, 238 F.3d 117 (1st Cir. 2001).

A denial based partly on the effects of RFE and partly on a valid reason may be held in violation of the FTA. *T-Mobile Northeast v. Loudoun County Board of Supervisors*, 903 F.Supp.2d 385 (E.D.V.A. 2012)(not all courts agree on this point).

Questioning a third-party RF engineer's report without evidence to call it into question will not satisfy the substantial evidence standard. *GTE Mobilnet of California Limited Partnership v. Town of Danville*, 2020 WL 2100323 (N.D.C.A. 2020).

Managing Public Concerns about RFE

Taking evidence from the public on their concerns about the environmental/health effects of RFE creates a greater risk of reversal of a denial, but is not necessarily fatal to the denial. *T-Mobile Northeast LLC v. Town of Islip*, 893 F.Supp. 338 (E.D.N.Y. 2012).

In a 2020 decision, the federal district court of Massachusetts rejected the applicant's claim that permit denials were based on a stealth consideration of the environmental effects of RFE where one of the permitting authorities stated more than once that it could not and would not consider RFE in making a decision, allowed abutters to testify at length about their RFE-related

opposition to the proposed facilities and denied the application on legitimate grounds. *T-Mobile Northeast LLC v. Town of Barnstable*.

- **Whether to Address Effective Prohibition**

Mixed Signals from the Courts: Consideration of evidence as to whether a denial would constitute an effective prohibition. The federal courts in Massachusetts regard the effective prohibition issue as separate from the substantial evidence issue and provide that the local permitting authority must base its decision on state permitting and local law. The federal courts decide the effective prohibition issue *de novo* and give no weight to a municipal decision on that issue. Some earlier court decisions took the position that if a municipality did not base its denial on effective prohibition not being established, it was barred from defending its decision on that ground. Others questioned municipal authority to consider effective prohibition. In a recent Massachusetts Appeals Court decision, *Cellco Partnership v. City of Peabody*, No. 19-P-1164 (Sept. 24, 2020), decided on the basis of state law, the Court ruled that the Land Court had jurisdiction to review the city council's denial of a special permit, and the city council was bound to adhere to the FTA in deciding that issue. On appeal, the court determined that the permit applicant had met the effective prohibition standard and the city council was obliged to grant the special permit.

Examples of the separation between substantial evidence and effective prohibition include cases where the local permitting authority did not have jurisdiction and authority to grant the request permit under the town's bylaws. *Omnipoint v. Town of Lincoln*, 107 F.Supp.2d 108 (D. Mass. 2000). Its denial was based upon substantial evidence, but was held in violation of the effective prohibition standard. The same may happen where there is substantial evidence for a denial under zoning law, but the denial is ruled an effective prohibition.

Safety Valve Provision

One suggestion is to include a safety valve provision in a bylaw or regulation which allows the applicant to seek an exception based upon the fact that a denial would amount to an effective prohibition. It would allow for consideration of the issue.

- **With knowledge of existing wireless permitting bylaws, regulations and practices, and a brief tutorial from Town Counsel, how should a municipality proceed in order to maximize local control over wireless land use?**

Procedures and standards should be workable for the community, address its primary interests and concerns; one size does not fit all; a highly detailed document may be too hard to apply in light of available resources. Sample documents from the Town of Burlington are included in the materials. There are many examples available to review.

Acquire some basic knowledge about wireless technology; applications are technical, but involve "what is it, where is it going, what does it look like, how does it work, is it noisy, will it topple over, will it interfere with other uses of the public way"

Staff has an important role in the development of procedures and standards governing wireless permitting

Planning and zoning staffs and DPW are among the keys in crafting and carrying out a wireless permitting bylaw, regulation or policy.

Recommended is a team approach drawing on several departments (Planning, DPW, Fire, Law/Town Counsel/consultant).

Staff training is necessary; outside resources are useful in the long run; consider group municipal action

Need to determine how permit applications are handled, what staff is involved

Standards must be formal and publicly available

Provide application forms and instructions

Fees must be publicly available

The FCC has established presumptively reasonable fees as a safe harbor for use until cost studies can be prepared or which can be maintained if no cost studies are performed. Fees above the FCC levels must be cost-based and objectively reviewable and defensible; identify input, assumptions and calculations

Voluntary pre-application meeting-useful for both parties

Grants of location for WCF in the public ways; general land use standard (G.L.c. 166, §§21,22): the proposed use may not incommode public use of the public ways; this standard includes an aesthetically objectionable use where there is substantial evidence in support of the objection; also includes interference with other uses of the public ways

Interim grant of location conditions may be negotiated pending the adoption of standards

Examples of Common Standards

Standards should include a definition of small wireless facilities and the application should require information needed to establish whether the proposed facilities are small wireless facilities.

Aesthetic standards must be in writing, published in advance and reasonable (technically feasible)

Pole and antenna height

Color of the equipment

Concealment of antenna

Positioning of wires and equipment on the pole

Concealment of wiring and equipment inside a pole

Whether meters are required or allowed

Favored and disfavored deployment locations

Proximity to residences, historic buildings, intersections

No attachments to a double pole slated for removal

Noise and lighting requirements

Structural integrity; risk of falling antenna or equipment; wind loading

Shut down required during an emergency

Participation in NJUNS system, Dig-Safe, and utility emergency planning

Base station considerations- FCC orders need to be closely reviewed Post-construction compliance inspection conditions

Standard conditions-bonds, insurance, indemnification, etc.

Update the identity of the permit holder; maintain current contact information

Conditions for annual certifications: facilities remain in service and in sound condition; RFE certification

No interference with other users of the public ways

Removal of WCF based on non-use

Development of Planning Guidelines for WCF in the Public Ways

May be suggested or required standards

Permit proceedings

Staff role during the hearing; help create the hearing record

Discussion of reports to the permit granting authority

Consider inviting the pole owner-learn about pole owner practices

Inspection of the proposed site and consideration of alternative locations

Mockups of proposed facilities

A grant of location is needed for an attachment to a municipally-owned streetlight pole, in addition to a separate agreement with the municipality (usually a license agreement)

FAQs

Educate the public about WCF permitting; FAQs may cover RFE issues, the substantial evidence standard, examples of small wireless facilities

Abutters

May assist in the development of the hearing record, but may sue if disappointed

Important that the public understand the RFE and substantial evidence requirements

Peer reviews may supplement staff resources

Authorize through a bylaw or code provision, cover in policies and regulations

Pluses and perils of peer review

FCC limitations on the pass through of peer review fees-cost must be objectively reasonable

Environmental Compliance Workshop

Small Wireless Facilities Introduction to Infrastructure Used for 5G Technology, and How to Approach Section 106 Compliance

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Federal Communications Commission
Wireless Telecommunications Bureau
November 2, 2023

* This presentation and its contents are for informational purposes only; the Commission's rules in part 47 of the Code of Federal Regulations and the Commission's previous reports and orders adopting those rules represent the binding rules and determinations of the Commission.

Agenda

- Introduction to Infrastructure Used for 5G Technology
 - High-level Overview of a 5G Cellular Network
 - What is 5G?
 - Types of Infrastructure Used for 5G Technology
 - Examples of Types of Macrocells
 - Need for Small Wireless Facilities?
 - Examples of Small Wireless Facilities
 - Number of Macrocells and Small cells in the US
- Streamlined Section 106 Review of Small Wireless Facilities



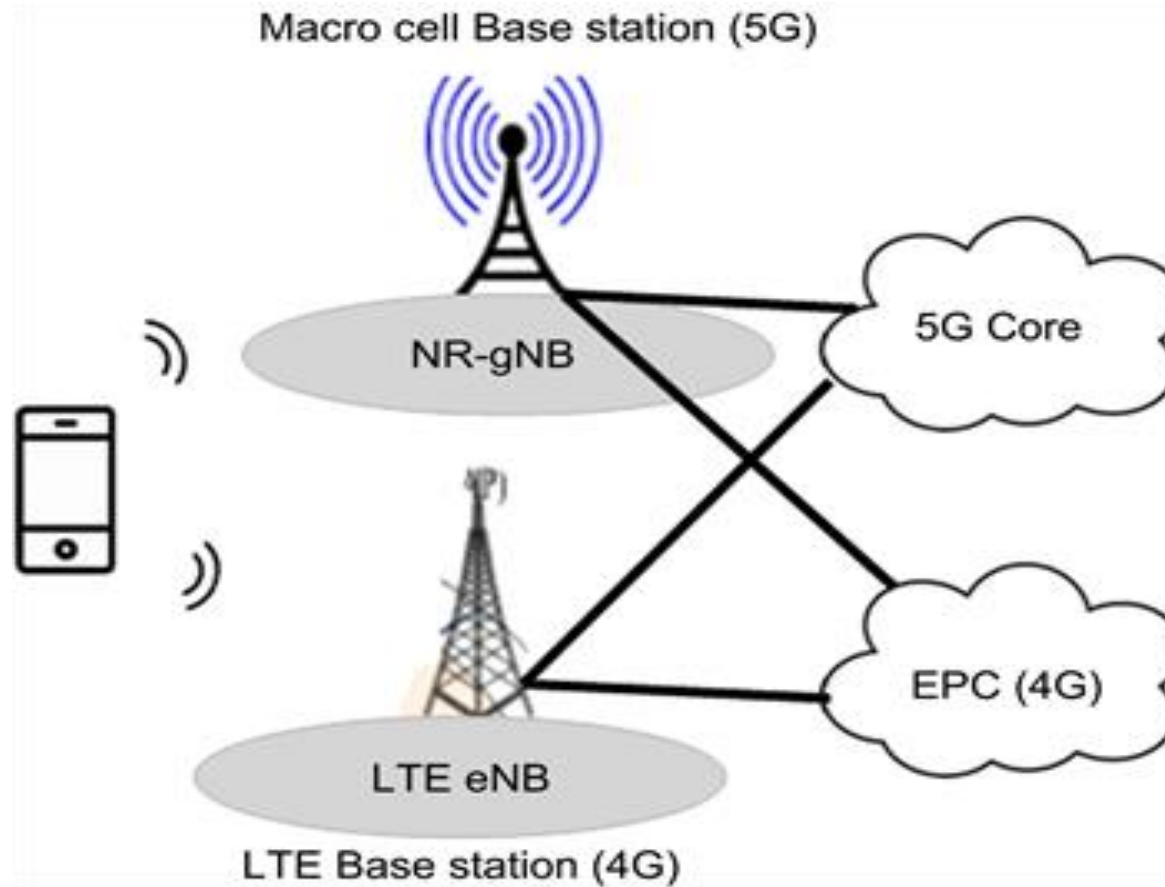
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Small Wireless Facilities

Introduction to Infrastructure Used for 5G Technology

Saurbh Chhabra, Sr. Electronics Engineer
Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission

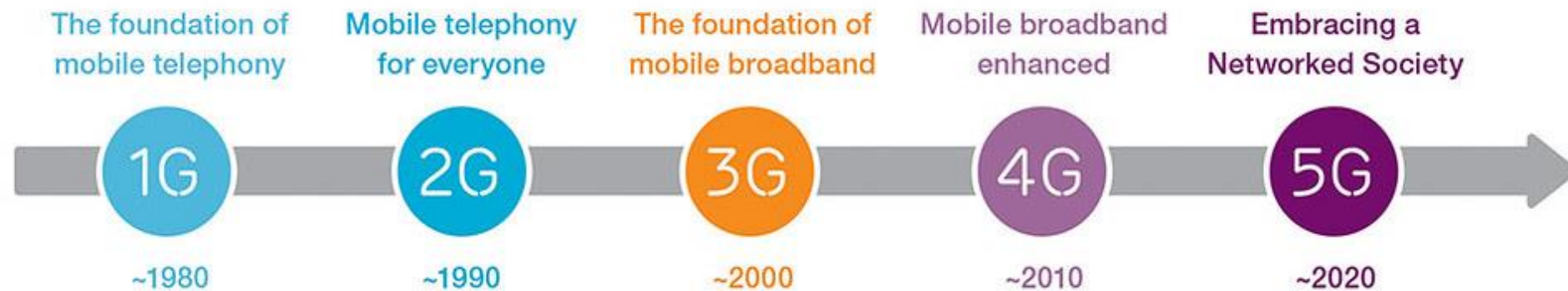
High-level Overview of a 5G Cellular Network



Source: [A. Rahman et al.](#), licensed under [CC BY](#)

What is 5G?

Wireless access generations



Source: [This Photo](#) by [Ericsson](#) is licensed under [CC BY-NC-ND](#)

5G Usage Scenarios

Enhanced Mobile Broadband (eMBB)

Peak download rate
> 20 Gbps

5G

Connection density
> 1M/km²

Latency
< 1 ms

Massive machine type
Communications (mMTC)

Ultra-reliable and low-latency
Communications (URLLC)

Source: https://www.itu.int/dms_pub/itu-r/opb/rep/R-REP-M.2410-2017-PDF-E.pdf

4G vs 5G

5G Dwarfs all of 4G's Specs

Comparison of key performance specs of 4G and 5G networks

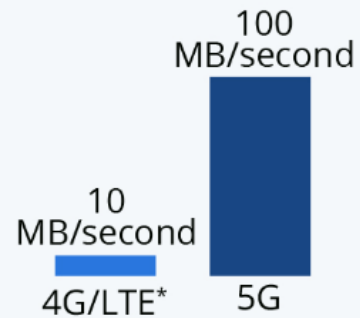
Download speed (peak)



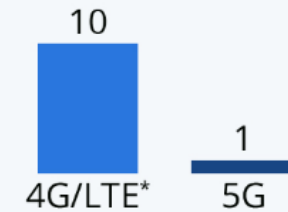
Maximum Bandwidth**



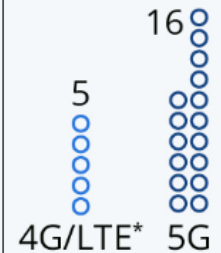
Download speed (real world)



Latency in milliseconds (lag from download order to download start)



Maximum number of carriers



* specs for LTE-Advanced, release 10-12

** used to distribute the signal through the air

Source: Android Authority



Types of Infrastructure Used for 5G Technology

- **Macrocells**
 - Macrocell sites are effective for covering large geographic areas (8-30 km in radius) with relatively high capacity, because the antennas are typically mounted on tall towers or the rooftops of tall buildings and transmit radiofrequency (RF) signals at high power levels.
- **Small Wireless Facilities**
 - On the other hand, facilities such as small cells and Distributed Antenna Systems (DAS) can be deployed to provide coverage in targeted locations (0.01 to 2 km in radius) by moving radios closer to the users, and to provide additional capacity in areas with higher demands for wireless voice and data services, which improves the quality of service and experience.
 - They use components that are a fraction of the size of traditional cell tower deployments and can often be installed on utility poles, buildings, and other existing structures.

Macro Tower Vs Small Wireless Facility



Source: [This Photo](#) by Unknown Author is licensed under [CC BY-SA-NC](#)



Source: [Tony Webster from Minneapolis, Minnesota, United States](#), [CC BY-SA 2.0](#), via Wikimedia Commons



10

Examples of Types of Macrocells

Lattice cellular tower



Source: [Steve Kazella \(talk\), Author](#), Public domain, via Wikimedia Commons

Monopole



Source: [larry.vt.300](#), [CC BY-SA 3.0](#), via Wikimedia Commons

Stealth flagpole monopole



Source: [Steve Kazella \(talk\) 14:17, 14 July 2009 \(UTC\)](#), Public domain, via Wikimedia Commons

Stealth tree monopole



Source: [SteveKazella, Author, CC BY-SA 3.0](#), via Wikimedia Commons

Building-mount
camouflaged cellular
antennas



Source: [Jim.henderson](#), CCo, via Wikimedia Commons

Need for Small Wireless Facilities?

- Continuous increase in mobile traffic and required user data rates in today's 4G and 5G networks create the need for increased network capacity, which can be achieved by:
 - Making more spectrum available;
 - Using spectrum more efficiently; and
 - “Densifying” the network (i.e., adding more cell sites to increase the amount of available capacity, or adding equipment to augment existing mobile networks and provide additional capacity in areas of high usage).
- Densification technologies include Distributed Antenna Systems (DAS) and small cells

Sources: <http://www.rcwireless.com/20161109/fundamentals/network-densification-5g-tag31-tag99>;
Bridging the Gap Report, at <http://www.jointventure.org/initiatives/civic-technology/wireless-communications>

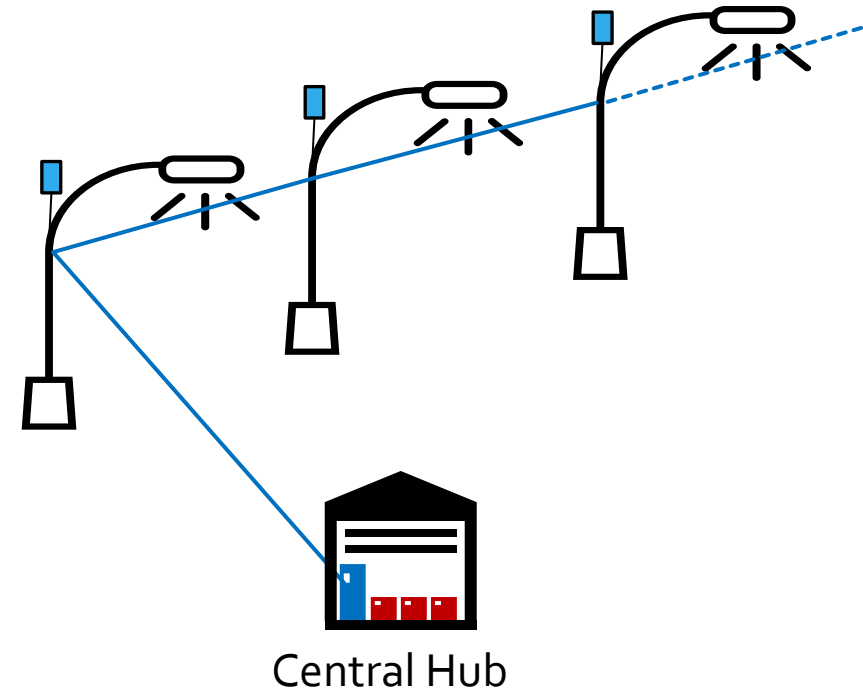
Small Cells

- “A small cell is a low-cost radio access point with low radio frequency (RF) power output, footprint and range. It can be deployed indoors or outdoors, and in licensed, shared or unlicensed spectrum.”
- “A small cell is a cellular base station that transmits & receives 3GPP-defined RF signals with small power and small form factor. In most cases, it services a small coverage area.”
- Types of small cells include femtocells, picocells, and microcells—broadly increasing in size from femtocells (the smallest) to microcells (the largest).

Distributed Antenna System (DAS)

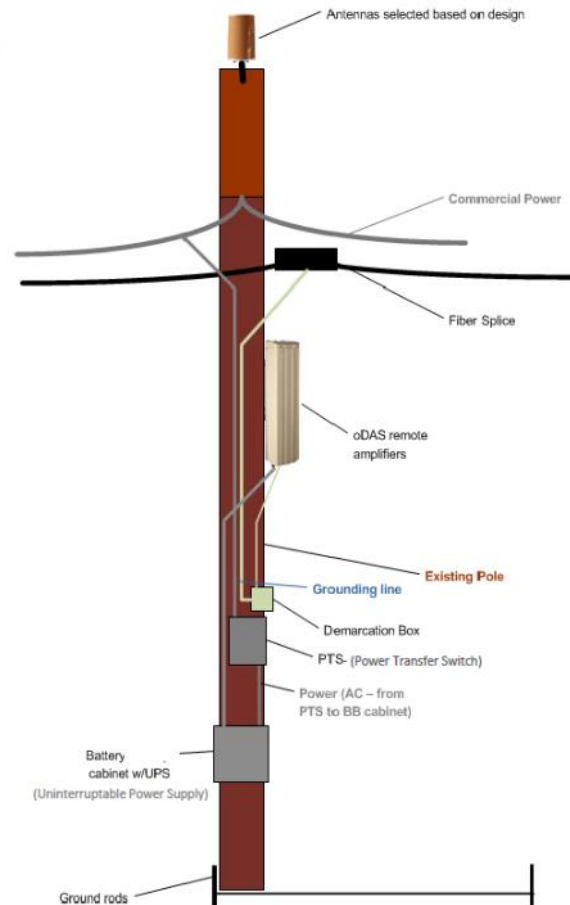
- A Distributed Antenna System distributes RF signals from a central point to antennas located throughout a facility or area to provide seamless wireless coverage and capacity.
- Typically used in large buildings, campus-type settings, stadiums, outdoor venues, city blocks, etc.
- Can support a variety of frequency bands and technologies.

DAS Nodes connected via Fiber

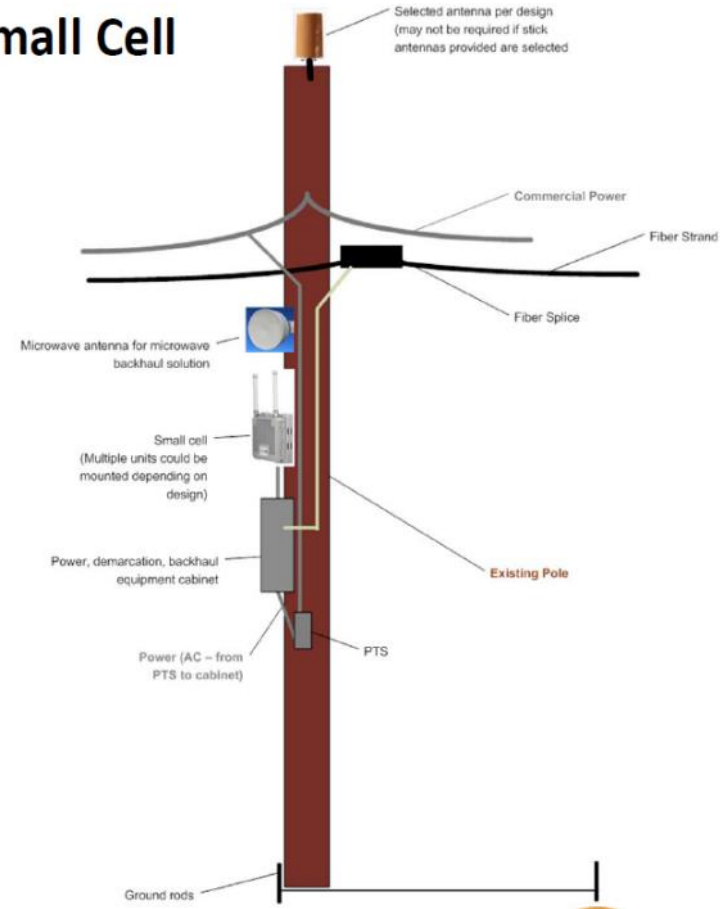


Pole-mounted DAS and Small Cell

oDAS



Small Cell



Source: Letter from Colleen Thompson, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-59 (filed June 17, 2013)



20

Examples of Small Wireless Facilities

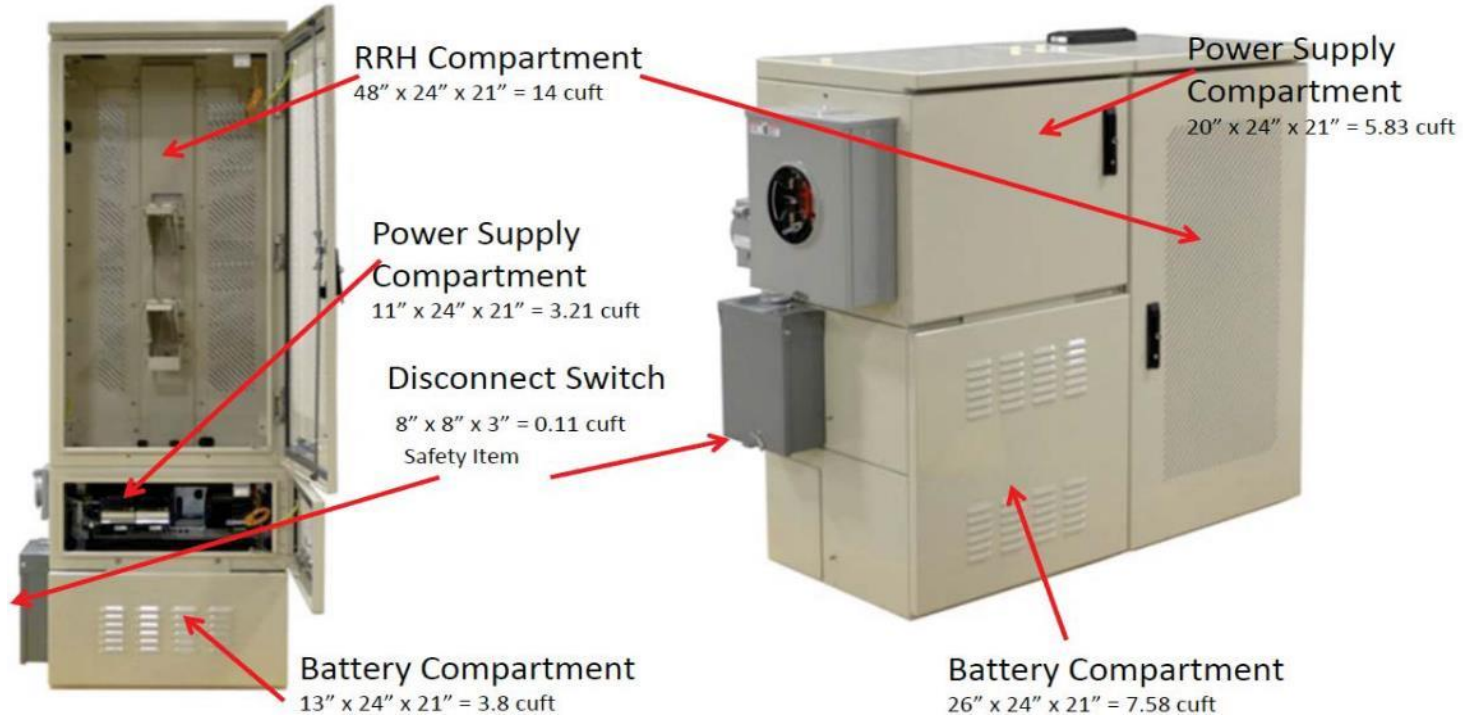
Two Small Facility Associated Equipment Cabinets

SECURITY CABINET ENCLOSURE

72" x 24" x 21" = 21 cuft
Includes RRHs, Power Supply, Batteries

SECURITY CABINET ENCLOSURE

48" x 48" x 21" = 28 cuft
Includes RRHs, Power Supply, Batteries



Source: Comments of PCIA, WT Docket No. 15-180, at 3 (filed December 18, 2015)

Rooftop Platform-mounted Small Cell Deployment

Cell Cabinet

19.92 cuft

Includes Radio Transmitter, Power Supply, and Batteries



TELCO DEMARC

0.5 cuft

Non-Verizon Owned

Disconnect Switch

0.11 cuft

Safety Item

Source: PCIA Letter to WTB, FCC, WT Docket No. 15-180, at 24 (filed December 18, 2015)

Small Wireless
Facility in
Historic Central
Park, NY



Source: Comments of PCIA - Attachment, WT Docket No. 15-180, at 25 (filed September 28, 2015)



Small Cell on a Lamp Post

Small facility deployed
in historic Pittsburgh,
PA

Source: Comments of Crown Castle, WT Docket No. 15-180, at 14 (filed September 28, 2015)

Small Cell on Utility Poles



Source: Comments of PCIA - Attachment, WT Docket No. 15-180, at 23 (filed September 28, 2015).

Small Cell on a Lamp Post



Source: [Tony Webster from Minneapolis, Minnesota, United States, CC BY-SA 2.0](#), via Wikimedia Commons



Stealth Small Cell Pole

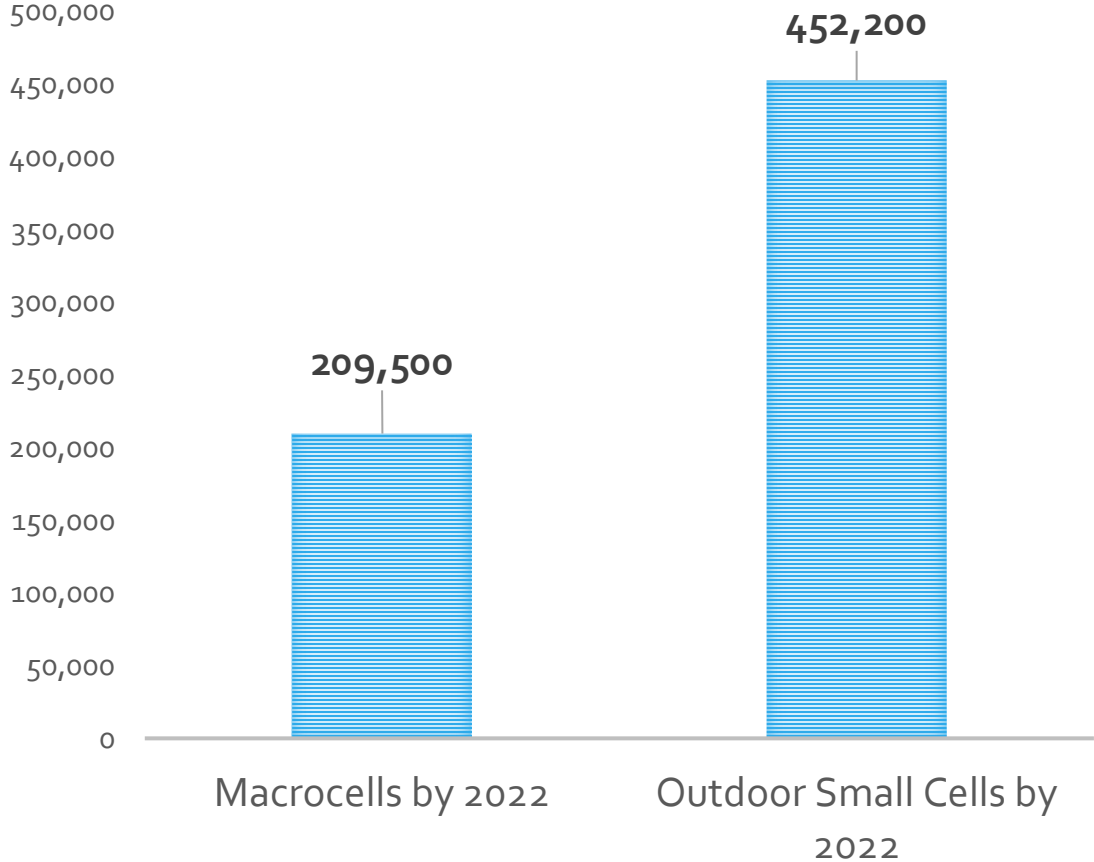
Equipment hidden inside the pole structure

Source: [Jeffrey Beall](#), [CC BY 4.0](#), via Wikimedia Commons

Number of Macrocells and Small cells in the US

End of Year 2022 Statistics by WIA:

- 142,100 cellular towers were deployed;
- 209,500 macrocell sites, not including small cells, were deployed;
- 452,200 outdoor small cell nodes were deployed; and
- 747,400 indoor small cell nodes were deployed.



Source: <https://wia.org/wireless-infrastructure-by-the-numbers-2022-key-statistics/>

Small Wireless Facilities

Streamlined NEPA and Section 106 Review of Small Wireless Facilities

Robert Krinsky, Attorney Advisor
Competition and Infrastructure Policy Division
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Federal Communications Commission

Small Wireless Facilities – Environmental Review

- The Federal Communications Commission has streamlined environmental and historic preservation review processes for small wireless facilities under the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA).
- Many small wireless facilities are deployed as collocations and the review process for collocations, including small wireless facilities, has been tailored to eliminate review of collocations that will not significantly affect the environment or adversely affect historic properties.

NEPA – Categorical Exclusion for Collocations

- Small wireless facilities generally qualify for the categorical exclusion for collocations.
- In general, collocations are categorically excluded from detailed environmental review under NEPA and the provider is not required to file an environmental assessment.
- Two exceptions are deployments that:
 - would cause human exposure to radio frequency emissions in excess of established guidelines; and
 - may affect historic properties that are listed in or eligible for listing in the National Register.

Section 106 Review – Small Wireless Facilities

- 2001 Nationwide Agreement for the Collocation of Wireless Antennas (Collocation Agreement) excludes from Section 106 review most collocations that are not on or near historic properties or historic districts.
- Exclusions for collocations on buildings, poles, and other non-tower structures in the original agreement were limited and did not apply to collocations that were:
 - on or near a historic building or structure; or
 - on a building or structure that was over 45 years old.
- Development of small wireless facilities created an opportunity to expand exclusions for collocations.

Collocation Agreement Amendment

- FCC, ACHP, and NCSHPO amended the Collocation Agreement on August 8, 2016.
- The 2016 amendment provided additional limited exclusions for small wireless facilities.
 - Expanded exclusions for small wireless facilities collocated on buildings and structures, regardless of age (*i.e.*, more than 45 years old) that are not historic or in or near historic districts.
 - Adopted limited exclusions for small wireless facility collocations on buildings and structures that are historic or in or near historic districts.

Small Cells on Buildings and Structures More than 45 Years Old

- Small wireless facilities on buildings or structures that are more than 45 years old are excluded from Section 106 review unless:
 - building or structure is located inside a historic district or visible within 250 feet of a historic district;
 - the building or structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register; or
 - the collocation causes new ground disturbance.

Small Cells on Buildings and Structures More than 45 Years Old

- The facility must meet specified size limitations to qualify as excluded:
 - Each individual antenna, excluding the associated equipment, may be no more than 3 cubic feet in volume and 6 cubic feet cumulatively.
 - Associated equipment may not exceed 21 cubic feet on poles and 28 cubic feet on non-pole structures.
 - If the collocation can accommodate at least three providers, associated equipment may not exceed 28 cubic feet for poles, and 35 cubic feet for non-pole structures, cumulatively.

Exclusion for Small Cells – Historic Properties

- Three exclusions for small wireless facilities in or near historic districts:
 - General exclusion for small wireless facilities on (or inside) historic properties, inside or near historic districts.
 - Exclusion for small wireless facilities on utility poles/electric transmission towers that are historic properties or inside or near a historic district.
 - Streamlined process for small wireless facilities on lighting structures in historic districts.

General Exclusion for Small Cells – Historic Properties

Small wireless facility collocations on buildings and non-tower structures that are historic properties or in or near historic districts are excluded from Section 106 review under specified conditions, provided that:

- Building may not be a National Historic Landmark;
- No pre-existing antenna on the exterior or interior of the building or structure;
- Antenna is disguised or stealthed to complement building or structure;
- Antenna on the building or structure is no larger than 3 cubic feet;
- Antenna's associated equipment may not be visible from public streets or public spaces at the ground level anywhere within 250 feet of historic district; and
- No new ground disturbance that would exceed the depth and width of any previous ground disturbance (including footings and anchoring mechanisms). Except up to four lightning grounding rods up to $\frac{3}{4}$ -inch in diameter may be installed.

Exclusion for Small Cells – Utility Structures in Historic Districts

Collocations on utility poles or electric transmission towers located inside or near a historic district are excluded, provided that:

- Structure is not a National Historic Landmark;
- Antenna does not exceed 3 cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna on the structure;
- Antenna's associated equipment on the structure does not cumulatively exceed 21 cubic feet in volume; and
- No new ground disturbance that would exceed the depth and width of any previous ground disturbance (including footings and anchoring mechanisms). Except up to four lightning grounding rods up to $\frac{3}{4}$ -inch in diameter may be installed.

Exclusion for Small Wireless Facilities – Lighting Structures in Historic Districts

- Collocation Agreement created a streamlined process for small wireless facility collocations proposed on structures that have the primary purpose of providing public lighting.
- Small wireless facility collocations on lighting structures that are located in or near historic districts may be eligible for an exclusion provided that:
 - Structure is not a designated National Historic Landmark or listed in or eligible for listing in the National Register of Historic Places;
 - Antenna, excluding the associated equipment, is no more than 3 cubic feet in volume, with a cumulative limit of 6 cubic feet;
 - The associated equipment and any pre-existing antennas and associated equipment on the structure, are cumulatively no more than 21 cubic feet in volume; and
 - No new ground disturbance that would exceed the depth and width of any previous ground disturbance (including footings and anchoring mechanisms). Except up to four lightning grounding rods up to ¾-inch in diameter may be installed.

Exclusion for Small Wireless Facilities – Lighting Structures in Historic Districts

- Applicant seeking an exclusion for a collocation of a small wireless facility on a lighting structure in or near a historic district is subject to the following procedural requirements:
 - Applicant determines that the structure is not a contributing or compatible element within the historic district;
 - Applicant must request in writing that the SHPO concur with its determination;
 - SHPO has 30 days to respond; and
 - If SHPO either informs applicant that the structure is not a contributing or compatible element or fails to respond to the applicant within 30-day period, the Applicant has no further Section 106 review obligations.

Utility Pole Replacement Exclusion

- In the 2017 Pole Replacement Report and Order (FCC 17-153 adopting 47 CFR § 1.1320), the Commission excluded from Section 106 review (under certain conditions) the replacement of a utility pole where the pole was not originally constructed for the sole or primary purpose of supporting an antenna for an FCC licensed service.
- This exclusion was adopted in part to help expedite the deployment of small wireless facility collocations on utility poles.
- The replacement pole exclusion complements the exclusion adopted in the 2004 Nationwide Programmatic Agreement, which excluded from Section 106 review (under certain conditions) the replacement of a tower that was originally constructed for the sole or primary purpose of supporting an antenna for FCC licensed service.

Utility Pole Replacement Exclusion (continued)

A utility pole replacement will be excluded from Section 106 review if both the original pole and the replacement pole meet certain conditions.

To be excluded, the original pole must meet the following conditions:

- ▶ It must be a pole that can hold utility, communications, or related transmission lines;
- ▶ The pole must not have been originally erected for the sole or primary purpose of supporting antennas that operate pursuant to a spectrum license or authorization issued by the Commission; and
- ▶ The pole itself may not be a historic property.

Utility Pole Replacement Exclusion (continued)

To qualify for the exclusion, the replacement utility pole must meet the following conditions:

- ▶ The location of the pole can be no more than 10 feet away from the original pole;
 - Distance is calculated from the centerpoint of the replacement pole to the centerpoint of the original pole.
- ▶ The replacement pole may not create new ground disturbance (either laterally or in depth);
- ▶ The height of replacement pole may not exceed the height of the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater; and
- ▶ The replacement pole must be consistent with the appearance and quality of the original pole.

Collocation of Antenna on Replacement Pole May Require Section 106 Review

- The replacement pole exclusion applies to the pole replacement alone. This exclusion does not apply to the antenna.
- Footnote 25 of the 2017 Pole Replacement Report and Order provides that the antennas are considered separately deployed and are subject to the Commission's rules implementing Section 106, including the terms of the Collocation Agreement.
- Applicants seeking to locate small wireless facilities on replacement poles excluded from review under the 2017 Pole Replacement Report and Order must consult the Collocation Agreement to determine if the antenna and associated equipment qualify for a Section 106 exclusion or require review.



QUESTIONS?

fccenvironmentalworkshop@fcc.gov



Select Board Meeting

Tuesday, January 14, 2025

7:00 PM

Select Board Room, Town Offices

36 Bartlet Street Andover, MA 01810

I. Call to Order – 7:00 P.M.

The Chair, Laura Gregory called the Select Board Meeting of Monday, January 14 2025 to order at 7:00 PM. Members in attendance: Vice Chair- Alex Vispoli, and members Melissa Danisch, and Kevin Coffey.

Others in attendance: Town Manager Andrew Flanagan, Deputy Town Manager Michael Lindstrom, Town Clerk and Deputy Town Manager Austin Simko, and Town Counsel Doug Heim.

II. Opening Ceremonies

A. Moment of Silence/Pledge of Allegiance

The meeting began with a Moment of Silence followed by the Pledge of Allegiance.

III. Opening Ceremonies

B. Moment of Silence/Pledge of Allegiance

IV. Town Manager Report

A. Updates

The Doherty Middle School Renovation Project of \$8M has reached substantial completion installing an elevator, removal of the ramp system that connected to the Auditorium, gym and other spaces and also brought the building up to code relative to fire suppression. The work was heavily managed by the Facilities Department and the Permanent Town Building Department.

Last week the Town integrated a software feature called Audio-wise into the website that enhances accessibility for all residents providing a visual tool kit containing customized features that helps people with visual impairments to navigate the website and fully engage with all of its content. It was a collaboration with the Town IT Department, Our Director of Communications Phil Geoffroy, Director of Communications, Facilities Director Janet Nicosia and the Chair of the Commission on Disability.

Winterfest run by Andover Recreation and Conservation will be held at Pomps Pond on Sunday February 2nd from 11:00 AM- 2:00 PM. Some activities are contingent on the pond being frozen.

The 2024 Participatory Capital Budget Projects were selected and include nine projects with pedestrian safety appearing to be a theme. They will be accepting applications for the next round through March 10th and announcing the information through the Dispatch and social media. Information can be found at [Andover MA.Gov/engage the CIP](https://www.andoverma.gov/engage-the-cip).

The first segment of Trash Talk will air on AndoverTV soon.

The Conservation Division will be hosting a guided walk at Bald Hill, and Wood Hill on Thursday January 30, at 9:00 A.M. to discuss Andover's Forest Cutting plan and the Stewardship Plan.

B. Staff Appointments (see list below).

Congratulations to Town Planner Monica Gregoire who received certification from the American Institute of Certified Planners; this is a major achievement and an honor to achieve.

Andover participated in a regional partnership with Haverhill and Lawrence led by the Merrimack Valley Planning Commission and received \$198,500 from the Efficiency and Regionalization Grant to expand with the Merrimack River Clean-up Project. We partnered with Clean Harbors this past year; thanks to the work of our Conservation Commission and neighboring communities.

Andover also received \$76,430 from the Energy Efficiency and Conservation Block Grant from the Dept of Energy that will fund support for residents looking to install heat pump systems to help them go through the process. Thanks u to Joyce-Losick for her work on this grant which brings the total grant awards of \$2.5 million in five years.

Andover also received a \$15,000 Grant from the N.E. Foundation for the Arts to support Public Art. Thank you to Ann Ormond for submitting the application on behalf of the Town.

The FY-2025 Budget will come out on Friday, February 7th – thank you to the team who makes this happen.

V. Communications/Announcements/Liaison Reports

At the next meeting they will discuss options for taking custody of the Shawsheen School. They can either keep it vacant or pilot some recreation programs from that building to cover the costs, which is the approach the Town Manager recommends. They have also started a market evaluation of the building so that the Town is fully abreast of the various options available. This will be a very public process.

Director of Recreation, Joe Connelly will be here at the next meeting to show what the opportunities are. They will only be using the spaces that are accessible at this time. A comprehensive discussion will be held with regard to the costs and use of the building.

Kevin Coffey asked if the Town has ever reached out to people who would be the obvious candidates for the Energy Grant for home heat pumps. Mike Lindstrom said Joyce Losick-Yang has been working on this concept. and have been looking to see who the best candidates would be.

Melissa Danisch thanked the Town for working with Mass DOT for messaging on Rte 495 and Rte 28. She encouraged people to sign up for Mass DOT emails about the updates. Melissa also mentioned that she and Kevin Coffey were at the Annual Breakfast for the Merrimack Valley Mayors and Town Managers and hearing about Andover's accomplishments that was really interesting. Thanks to our Town Manager for his presentation, that was impressive.

Selectman Coffey gave a shout out to the Central Street Historic District Study Committee. He attended their recent meeting and was impressed with the scope and depth of the work and the thought they put into it regarding livability and do-ability. They have done good work at a quick pace.

Mike Lindstrom said that National Grid announced their new supply rate for the next six months which runs from February 2025 through July 2025 and for the 3rd straight rate period Andover has beat the National Grid rate. Letters will be going out to residents next week on how to opt out of their contract and joining Andover Power. Information is available on the frontpage of the Town Website.

Next steps: Mike and Joyce Losick-Yang will be sending a letter to residents that talks about what steps they have been taken and what they continue to offer for their energy supply. It is estimated that residents have saved over \$150 over National Grid prices. People who want to opt in or out can find information on the front page of the Andover website.

Doug Heim will be absent from the Select Board Meetings for a while as they begin to discuss the Warrant Articles for the 2025 Town Meeting and also helping residents with questions they may be considering to submit.

Doug also Recognized Town Planner Jacki Byerly at a hearing before the Executive Office of Housing Communities to offer technical comments on their draft regulations on ADU's to try to represent comments from the Select Board and technical pieces from the Planning Staff and Legal Department. It was an interpreting opportunity to see where our community lies.

Austin Simko reported that three weeks from today is the deadline for candidates to put their names on the ballot. There is one opening on the Housing Authority and two seats for Punchard Free School Trustees. They have no candidates for those two boards as yet. If anyone has questions on how to get on the ballot they can contact him. Laura Gregory said they need 50 certified signatures to get on ballot.

VI. Public Comment-none

VII. Regular Business

A. [Solid Waste Collection and Recycling](#) (1st Reading).

Board to receive a Solid Waste and Recycling update from the Town Manager including an overview of collection and disposal options (see presentation link)

Review Contract Term: The 5-year contract was reviewed by the Town Manager including the financial terms for Year 1 through 5.

Other Considerations: Annual increase in recycling disposal costs is the cost that is actually passed through to residents. The Community Partnership Funding (new).from Republic (provider) is contributing \$7,500 per year that will help with the cost of printing /mailing the guide.

The cost of toters this year will be around \$4M based on the disposal costs per ton. The presentation on the Solid Waste & Recycling Collection included the financial terms, projected costs, annual increase, the estimated disposal costs for trash and recycling and the projected total collection and disposal costs for a five-year period.

Options for Andover residents: The Town Manager presented information under consideration for Solid Waste & Recycling Collection. DPW Director Carlos Jaquez also provided comment on the information presented.

The Town will provide one 64-gallon Trash Cart and one 96 Gallon Recycling Cart for all households. The new program will start on July 1, 2025. The Board discussed the 96 and 64-gallon carts (two- carts = 4 barrels).

There have been a lot of questions on overflow bags that the Town will offer especially around the holidays/ peak times; there are all several models to consider:

1. The Town will offer and pick up overflow bags on the holidays (peak times of the year), considering pilot programs to offer including offering an overflow bag program for residents who have periodic needs for additional disposal capacity. Residents may request smaller carts after the initial rollout of the program.

Presentation included maintaining service levels of the current barrels/bins and proposed barrels for trash and recycling. It also included a chart of what comparable communities offer.

Other considerations:

Disposal of current barrels and/or carts, (resident may use their current barrels and/or carts for yard waste disposal, composting).

Create a Trash & Recycling Advisory Task Force that will work with the Town Manager to evaluate trends and help educate residents on waste and recycling options.

The cost of curbside composting may exceed \$1M annually so the Town is exploring potential partnerships that may provide composting options funded by the resident.

The presentation included information on the multi-faceted communications plan for the change in the trash and recycling program the Town is conducting. The plan will include the following:

There will be two direct mailings in April and June 2025. Engagement Sessions: Opportunities for interaction with the 'cart' and some virtual webinars and in-person meeting will be held in March at the Robb Center so people can see the carts or participate in on-line segments on AndoverTV.org. Deploying the Mobile Town Hall bringing the carts out to the neighborhoods, as well as social media posts FAQ page, Andover Insider texts, and Andover TV Segment: Trash Talk Episode One launched this week.

Alex Vispoli said this is the service that affects everybody and the service that works now.

The Board had a lengthy discussion on the over flow bag options. At the Town Manager's discretion, they could get the word out regarding the change in trash collection and use of overflow bags by inserting an FAQ on trash services in with the property tax/water bill.

Debra Cummings, 67 High Street, asked how they will deal with people who are moving out of Andover and typically leave behind a lot of waste. Doug Heim said that generally the owner of the property has the responsibility to make sure the waste is removed. Neighbors should alert the Town if there is a problem with multi-family areas. This information should be included in the FAQ.

The Board will make their decision at their next meeting on Monday, February 27th.

B. Select Board Policy Review

Board to review and consider voting on changes and/or additions to the Select Board Policy Manual. Policies to be reviewed include the Personal Wireless Service Facilities Policy and list of Select Board Policies, additions and subtractions (1st Reading).

Town Counsel Doug Heim provided information on the suggested changes to the Select Board's Policy Manual. He also provided the Board a document for an inventory, and suggestions on revising policies, and what the Board would like to see that is not there now. i.e. a robust chapter on how you regulate parking and traffic rules and regulations.

In the coming months, Town Counsel suggested they conduct an assessment with members of the Town departments to find out what could be included or revised in the Select Board's Policy Manual.

The Board previously drafted and adopted a small cell wireless policy to improve the facilities. The Board wanted to have a more robust policy so they retained Alan Mandl who has a robust background in small cell wireless policy and was present virtually at the meeting reporting on the Telecommunications Act and procedures to be in compliance with Federal Law, what the Town considers important, and exceptions to standards. Mr. Mandl thinks the Boards policy is a good balance.

Melissa Danisch shared that the application will also be updated and have a check list format to make sure the policy is/has been complied with. Kevin Coffey asked if there is a way to we can make a decision about a particular site, location, or tool that has an incentive for carriers to cover the Town more broadly. Mr. Mandl said it depends upon how the by-laws read.

Next steps: Austin Simko said the next step is to have serval Town Departments read through the policy again and if the Board is comfortable with the policy, it could be put on the January 27th Select Board Agenda.

C. MBTA Communities Law Discussion

Board to receive an update from Town Counsel on MBTA Communities Law and Supreme Judicial Court Decision regarding *Attorney General vs. Town of Milton*.

Attorney Heim reported that the law, as it is written now, requires us to comply with the terms. The Attorney General's Office can enforce the law in both law and equity. As they expected, the idea that you will only be losing specific grants if you did not comply with the law was rejected by the Courts. The Executive Office of Housing Committee was not procedurally specific.

It is expected that they will provide emergency regulations that could be changed. Those that are in compliance are okay, but it might be possible for adjustments in regulations that could be favorable to Andover; we may have to tweak or adjust our bylaws. The understanding is that this will unlikely dramatically impact Andover. He is confident we have put ourselves in a good position.

VII. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved.

Alex Vispoli moved to approve the appointment by the Town Manager as listed in the Consent Agenda. Motion seconded by Melissa Danisch and voted 4-0 to approve.

Department	Name	Position	Rate/Term	Date of Hire
Greater Lawrence Sanitary District	Carlos Jaquez	Commissioner	Term Expires 01/14//2028	01/15/2025

VIII. Approval of Minutes

A. Board to approve minutes from the following meetings:

1. December 2, 2024 Tri-Board
2. December 16, 2024 Select Board

On a motion by Melissa Danisch and seconded by Alex Vispoli the Board voted 4-0 to approve the minutes of the December 2, 2024 Triboard Meeting and the December 16, 2024 Regular Session Minutes as printed.

IX. 2025 Select Board Meetings

A. Board to consider voting to accept the following Select Board Meeting Schedule:

- Monday, March 10, 2025
- Monday, March 31, 2025
- Monday, April 14, 2025
- Tuesday, April 29, 2025 (prior to Town Meeting if necessary)

On a motion by Melissa Danisch and seconded by Alex Vispoli the Select Board voted 4-0 to approve the meeting dates as presented in the agenda.

B. Summary of Town Manager Staff Appointment

The Town Manager is pleased to announce the following appointments:

Department	Name	Position	Rate/Term	Date of Hire
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Town Clerk	Jamie Doherty (Vanessa French)	Assistant Town Clerk	\$91,359.19/year	01/06/2025
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X. Adjourn

At 9:03 PM on a motion by Alex Vispoli and seconded by Melissa Danisch, the Select Board voted. 4-0 to adjourn the the meeting of January 14, 2025.

Respectfully submitted,

Dee DeLorenzo

Recording Secretary

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Amy Heidebrecht in the Town Manager's Office at 978-623-8213 or by email at amy.heidebrecht@andoverma.us

MEETINGS ARE TELEVISED ON
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45