

**A BYLAW RELATIVE TO SMALL WIRELESS FACILITIES IN
PUBLIC RIGHTS-OF-WAY, PRIVATE RIGHTS OF WAY, PUBLIC PROPERTY
AND PRIVATE PROPERTY**

(Small Cell Bylaw PB Voted.3.19.19.No.4)

7.3 SMALL WIRELESS FACILITIES

7.3.1 **Purpose and Intent.** The Town finds that it is necessary and beneficial for the health, safety, and welfare of the community to regulate the development of small wireless facilities (SWF) while accommodating the communication needs of residents and businesses. SWF's shall be so designed and installed so as to minimize adverse visual effects through careful design and siting with an intent to preserve property values and the aesthetic character of Hamilton. To that end, this bylaw section seeks to maximize the use of existing towers, poles, and buildings to accommodate new SWF. This section applies to the placement and operation of small wireless facilities within the public rights-of-way, private rights of way, public and private property without regard to the type or owner of any structure to which they are affixed or attached. The requirements of this section 7.3 are in addition to all other applicable federal, state, and local laws.

(a) Definitions:

abandoned – cessation of all uses of an SWF for a period of one hundred eighty (180) consecutive days or more. Where a wireless infrastructure provider has applied to place utility poles in the public right-of-way to support the collocation of small wireless facilities, and such collocation is not used by a wireless services provider to provide service within nine (9) months after the date the application is approved, same shall be deemed abandoned;

ADA - the Americans with Disabilities Act, as amended, and the regulations promulgated thereunder;

antenna – apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operated from a fixed location for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna;

applicable codes - Massachusetts building, plumbing and electrical code, uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, and the National Electric Code, National Electric Safety Code, and the rules, regulations and provisions of the Federal Communications Commission, the Occupational Safety and Health Administration, and any other state or federal agency regulating wireless communications;

applicant - any person who submits an application and is or is acting on behalf of a wireless services provider or wireless infrastructure provider;

application - a written Special Permit application form submitted by an applicant to the Planning Board, to install or operate a small wireless facility within any right-of-way or in or on any building or structure, including a request for a permit to collocate small wireless facilities on an existing pole or wireless support structure; or a written request for installation of a new pole or wireless support structure for a new small wireless facility, as well as all required exhibits and submittals as required by the application form and the applicable fee for the review of such application;

batched application – either multiple separate applications filed at the same time each for one or more sites or a single application covering multiple sites;

collocate or collocation - to install, mount, maintain, modify, operate, or replace an antenna on an existing tower, building, or structure for the purpose of transmitting or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure;

concealed facility - a wireless facility that is not readily identifiable as a wireless facility and that is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site or in the neighborhood or area. A concealed facility may have a secondary function. There are two types of concealed facilities:

- base stations - including but not limited to faux panels, parapets, windows, dormers or other architectural features that blend with an existing or proposed building or structure; and
- concealed tower — a tower designed to resemble another structure that is common in the geographic region such as a traditional or decorative light standard or traffic signal or utility pole consistent in size with the height and girth of existing structures in the area;

communications service - cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service;

communications service provider - a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider;

dual-purpose facility - a wireless facility that is secondary to the primary function of the right-of-way infrastructure, such as a light pole, utility pole, traffic signal, etc.;

FCC - the Federal Communications Commission of the United States;

fee - a one-time charge paid to the Town by the applicant with the application;

interference — The effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy;

law - a federal, Massachusetts, or local statute, regulation, bylaw, order, policy, or rule;

neutral host antenna - an antenna or an antenna array designed and used to provide services for more than one (1) wireless provider, or a single wireless provider using more than one (1) frequency band or spectrum, for the same or similar type of services;

permit - a written authorization that must be obtained by the applicant from the SPGA to perform an action or initiate, continue, or complete a project;

person - an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization;

public safety agency - the functional division of the federal government, the commonwealth of Massachusetts, the Town, any other unit of state or local government, or a special purpose district located in whole or in part within this commonwealth, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents;

rate - a recurring charge paid by the applicant to the Town;

right-of-way - the area on, below, or above a public or private roadway, highway, street, public sidewalk, or alley dedicated for compatible use;

small wireless facility - facilities that meet each of the following conditions:

(1) The facilities — (i) are mounted on structures 50 feet or less in height including their antennas as defined in 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 antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three 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 this chapter; (5) The facilities are not located on Tribal lands, as defined under 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 section 1.1307(b).

Town utility pole - a utility pole owned by the Town in the public right-of-way or on Town property;

utility pole - a pole or similar structure that is used in whole or in part for electric distribution, lighting, traffic control, communications, or a similar function;

wireless facility - includes small wireless facilities. "Wireless facility" does not include:

(i) the structure or improvements on, under, or within which the equipment is collocated; or

- (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna;

wireless infrastructure provider - any person authorized to provide telecommunications service in the commonwealth that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the SPGA;

wireless services - any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities;

wireless services provider - a person who provides wireless services;

wireless support structure - a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include a utility pole".

(b) Development Standards

(1) Only small wireless facilities are permitted to be installed within a State or Town right-of-way on new or existing utility poles or wireless support structures. All small wireless facilities eligible for a special permit under this section shall not exceed the size dimensions of the small wireless facility definitions and shall be designed as concealed facilities and shall be subject to applicable development standards and procedures as required by local, state and federal laws.

(2) New utility poles or wireless support structures shall be designed to match the design parameters established by the SPGA by regulation or in the absence of such design guidance, match the size, girth and design of any existing utility poles or other vertical structures located in the surrounding area.

(3) The applicant shall include with its application sufficient evidence, consistent with industry standards, to justify its requested placement.

- (4) Small wireless facilities must be placed in a right-of-way with residential or commercial uses on the opposite side of the right-of-way from such uses whenever possible. All small wireless facilities shall be located in such a way that they do not interfere with views from residential structures.
- (5) All small wireless facilities shall be located so as to minimize adverse visual effects on the landscape.
- (6) All small wireless facilities either independently sited or mounted on or to existing buildings and structures shall be camouflaged.
- (7) When a small wireless facility extends above the roof height of a building on which it is mounted every effort shall be made to conceal every component within or behind existing architectural features to limit its visibility from public view.
- (8) All small wireless facility components mounted on a roof shall be stepped back from the front façade in order to limit its impact on the building silhouette and the public view.
- (9) The Planning Board shall determine if sufficient area exists immediate to the proposed small wireless facility so that landscape improvements would be aesthetically beneficial it shall request a landscape plan from the applicant. Said plan will seek to screen or buffer the public view of the proposed small wireless facility.
- (10) Any small wireless facility shall be painted so as to visually blend into nearby vegetation or a light gray or light blue hue that blends with sky and clouds.
- (11) The Planning Board may adopt other and further objective aesthetic and location criteria applicable to all applications submitted under this Section 7.3.

(c) Contents of Application and Application Process

- (1) Each application must include the following:
 - a. The application fee.
 - b. A completed application cover sheet on the form available from the Hamilton Planning Department.
 - c. Applicant's name, address, telephone number and email address.

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- d. Names, addresses, telephone numbers, and email addresses of anyone acting on behalf of the Applicant with respect to the application.
- e. Detailed construction drawings and descriptions of the equipment to be installed, whether mounted on poles or on the ground, or otherwise, including:
 - i. Type of equipment
 - ii. Specifications of equipment (including but not limited to dimensions and weight)
 - iii. Equipment mount type and material
- iv. Power source or sources for equipment, including necessary wires, cables, and conduit
- v. Expected life of equipment
- vi. Coverage area of equipment, including:
 - 1. Amount of antennas
 - 2. Antenna model
 - 3. Antenna length
 - 4. RRU count and power
 - 5. Antenna height
 - 6. Typical coverage area radius
- vii. Call capacity of equipment, including:
 - 1. Total RRUs
 - 2. Max bandwidth per RRU
 - 3. MIMO per RRU
 - 4. Backhaul rate per RRU
- viii. Hardening, including:

1. If there is battery backup
 2. If there is generator backup
 3. If there are multiple fiber paths to switch
- ix. Rendering and elevation of equipment
- f. Detailed map with locations of the poles or other facility on which equipment is to be located, including specific pole identification number, if applicable, and the areas it will service.
 - g. Detailed map showing existing and proposed small cell installations within 500 feet of the Application site.
 - h. Certification by a registered professional engineer that the pole/or location will safely support the proposed equipment.
 - i. Written consent of the pole or facility owner to the installation.
 - j. Affidavit from a Radio Frequency Engineer outlining the network/network service requirements in Hamilton and how the installations address that need. Such affidavit should characterize the current level of coverage and how the desired installations will change the current level of coverage, through or with coverage maps, including current and proposed coverage, including a breakdown of "excellent" "good and "poor" reception areas.
 - k. Insurance certificate.
 - l. Description as to why the desired location is superior to other similar locations, from a community perspective, including:
 - i. Visual aspects
 - ii. Proximity to single family residences.
 - m. Description of efforts to co-locate the equipment on existing structures, poles, or towers which currently exist or are under construction. A good faith effort to co-locate is required and evidence of such efforts must be included within the application.

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- n. An affidavit from the applicant which certifies that it will maintain the installations in good repair and according to FCC standards, and will remove any installation not in such good repair, or not in use, within 60 days of being no longer in good repair or no longer in use.
- (2) No applications will be accepted by email. Applications delivered other than by hand will be deemed filed when they are received by the Planning Department.
- (3) All submitted drawings require a wet stamp or wet signature from the design professional.
- (4) The applicant must pay for legal notices of the public hearing to local newspapers and abutters, as applicable. The applicant is responsible for submitting the abutters list for each location with the application.
- (5) Twelve (12) hard copies of the application and 1 (one) electronic copy of the application must be submitted to the Planning Department.
- (6) Upon receipt, the Planning Director shall: (1) date and time stamp the Application as received; and (2) make a determination as to completeness of the application and notify the Applicant, in writing, within 10 days, if the application is incomplete. If the Applicant is notified that the application is incomplete, the time periods set forth in this bylaw shall be tolled until such time as a complete application has been submitted.
- (7) The Planning Department shall circulate a copy of the application to the following departments for comment and review: Building; DPW; Health; and, any other department the Planning Director, in his or her sole discretion, determines.
- (8) Written comments from the departments shall be submitted to the Planning Department within 20 days of circulation of the application.
- (9) Once the application is deemed complete, and all comments have been received, the Planning Board will schedule and hold a public hearing to consider the application.
- (10) Any material changes to an application, as determined by the SPGA in its sole discretion, shall constitute a new application for the purposes of the time standards.

Where a changed or new application is submitted, the prior application shall be deemed withdrawn.

(d) Approval Process

1. The Hamilton Planning Board shall be the Special Permit Granting Authority.
2. No work relating to a small wireless facility shall be performed without a Special Permit(s) from the Hamilton Planning Board and a building permit from the Hamilton Building Inspector. Prior to submittal of a Special Permit application for a small wireless facility, applicant shall obtain and submit all permits, licenses, and authorizations that are required for the installation and operation of the small wireless facility from other departments within the SPGA and persons other than the SPGA, including but not limited to private property owners, utilities, and other governmental entities. An application that has not obtained all other necessary permits shall be deemed incomplete.
3. The Planning Board shall approve or deny an application within the time frame required by law, subject to extension by mutual agreement of the parties.
4. Applicant is allowed to file a batched application for no more than ten (10) separate small wireless facilities.
5. The SPGA may remove a small wireless facility from a batched application and treat separately small wireless facility locations for which incomplete information has been provided or that are denied. The SPGA will issue a separate permit for each location that is approved.
6. Upon completion of the hearing, the SPGA may grant, grant with
7. conditions, or deny the application, based on inadequate capacity of the pole or mounting structure, safety concerns, reliability concerns, or failure to meet applicable law or engineering standards.
8. Any approval granted to an applicant shall be only for the specific applicant and application. Any change in the name/carrier or sistered service provided by another carrier or small cell wireless location will require a new application and approval from the SPGA.

9. If the SPGA denies an application, then the SPGA must:
- a) Document the basis for a denial, including the specific code provisions on which the denial was based;
 - b) Send the documentation to the applicant on or before the day the SPGA denies an application.

(e) Application Submittal Requirements. Applicants for small wireless facilities shall submit all information and material as detailed within this bylaw as part of a Special Permit application.

(f) Small Wireless Facilities in the Historic District. Any application proposing the installation of small wireless facilities within the Town’s historic district shall comply with the following requirements in addition to those generally applicable as required by the Historic District Commission:

- (1) Concealment techniques shall be designed to be consistent and harmonious with the nature and character of the historic district, including color, shape and size of proposed equipment;
- (2) New utility poles or wireless support structures shall be designed to match the size, girth, and design of any existing utility poles or other vertical structures located in the historic district right-of-way, i.e. decorative light poles;
- (3) A certificate of appropriateness, certificate of hardship, or certificate of non-applicability must be obtained by the applicant before any application will be accepted by the Planning Department.
- (4) This subsection shall not be construed to limit the Town’s enforcement of historic preservation in conformance with the requirements adopted pursuant to M.G.L. c. 9, §§ 26-27C, c. 40C, or the National Historic Preservation Act of 1966, 54 U.S.C. § 300101 *et seq.*, and the regulations adopted to implement those laws.

(g) Interference with Public Safety Communications.

- (1) Applicants for small wireless facilities shall certify through a qualified radio frequency engineer in their application that operation of the small wireless facilities, including under maximum licensed operating parameters, will not cause interference with the frequencies used by the Town, commonwealth or any other public safety agency used for public safety communications and shall further provide a list of radio frequencies the applicant will use at that location, which list shall be updated as needed. The applicant shall provide evidence of the certifying engineer's qualifications to make such certification.

- (2) A wireless services provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with the Town's and any other public safety agency's communications equipment; unacceptable interference will be determined by and measured by the Town in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by the Town or any other public safety agency. If a small wireless facility causes such interference, and the wireless services provider has been given written notice of the interference by the Town or any other public safety agency, the wireless services provider, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary. The SPGA may terminate a permit for a small wireless facility based on such interference if the wireless services provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

- (3) Any permit issued by the SPGA for a small wireless facility shall be subject to final testing for frequency and power output levels by the SPGA to determine whether the small wireless facility creates unacceptable interference to any public safety system. At the reasonable request of the SPGA, the small wireless facility provider shall engage the small wireless facility at maximum operating parameters for such period as required for

SPGA to conduct its testing for interference. Such testing shall be at the expense of the SPGA but shall be reimbursed by applicant if the testing reveals unacceptable interference.

- (4) The owner of a small wireless facility shall provide the Town's Fire Chief a twenty-four hours / seven days a week (24/7) emergency contact list of not less than two (2) persons responsible for the operation of the small wireless facility, including name, mobile/cellular phone and email address. This list shall be used to contact a responsible person for the wireless services provider or wireless infrastructure provider in the event of an emergency or exigent circumstance. The applicant shall update this list thereafter as necessary. If the contact list is not current, and no person can be reached during such circumstance, the Town reserves the right to take whatever reasonable immediate action necessary to mitigate the emergency until such time as a responsible person for the small wireless facility is contacted. The Town shall have no financial responsibility to the owner of the small wireless facility or any wireless service provider arising from such actions.

(h) Application Fees; Supplemental Review.

- (1) An application for small wireless facilities shall be accompanied by the following fees payable to the Town:
 - Application fee for one (1) to five (5) small wireless facilities - \$500.00
 - Additional application fee for each small wireless facility greater than five (5) SWF's - \$100.00 per facility.
- (2) There is no application fee due for (i) routine maintenance of small wireless facilities; or (ii) the replacement of small wireless facilities with small wireless facilities that are substantially similar, the same size, or smaller, than the original provided that the wireless services provider notifies the SPGA at least ten (10) days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of this section and application regulations. However, the wireless facility provider shall obtain any and all other permits and approvals, including but not limited to the permit(s) to work within rights-of-way for such activities that affect traffic patterns or require lane closures.

- (3) The SPGA reserves the right to require, in its sole discretion, a supplemental review by independent experts for any application for a small wireless facility under this section where the complexity of the analysis requires technical expertise, and/or for any request to vary a standard under this section. All the costs of such review shall be borne by the applicant, in addition to scheduled fees, pursuant to the provisions of G.L. c. 44, § 53G and SPGA Bylaw Ch. VIII, Section 5.
- (4) Whether based on the results of the supplemental review or the SPGA's own review, the SPGA may require changes to or supplementation of the applicant's submittal(s). The supplemental review may address any or all of the following: (i) the accuracy and completeness of the application and any accompanying documentation; (ii) the applicability of analysis techniques and methodologies; (iii) the validity of certifications provided and conclusions reached; and/or (iv) whether the proposed small wireless facility complies with the applicable approval criteria and standards of this section, and other applicable law.

(i) Rates for Small Wireless Facilities within the Right-of-Way. An applicant who places a small wireless facility on a Town utility pole or any other structure within a right-of-way or upon any Town property in accordance with this section shall (a) execute a license agreement with the Town and (b) pay to the Town an annual recurring rate of \$270.00 per year per facility, or any such higher rate permitted under FCC rules or federal law and as set forth in the license agreement, for the use of such utility pole, right-of-way, or structure.

(j) Required Permit Provisions. Each permit issued by the Planning Board and each license agreement for small wireless facilities shall be made upon the condition that the applicant agree to the following conditions:

1. **Indemnification.** To the fullest extent allowed by law, both the wireless infrastructure provider and wireless services provider (for this paragraph, collectively referred to as "provider") constructing, installing, operating, repairing, maintaining and using a small wireless facility shall indemnify, defend and hold harmless the city, and its officials, agents, and employees from and against all suits, actions or claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of, or resulting from, said provider's breach of any provision of law, or any

asserted negligent act, error or omission of the provider, or its agents or employees, arising from or relating to its small wireless facility. The indemnifications required hereunder shall not be limited by reason of the specification of any particular insurance coverage for any permit. The provider's obligations under this provision shall not terminate with the expiration or termination of its permit, but shall survive it.

2. Dispute Resolution. A court of competent jurisdiction located in Essex County, Massachusetts shall have exclusive jurisdiction to resolve all disputes arising under this section applying the laws of the commonwealth of Massachusetts. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way or upon Town property, the Town shall allow the collocating party to collocate on its poles at annual rates of no more than \$270.00 per year per facility, with rates to be determined upon final resolution of the dispute.

(k) Exceptions to Applicability. Nothing in this section authorizes a party to locate small wireless facilities on: property owned by a private party, property that is not located within the rights-of-way, or a privately owned utility pole or wireless support structure within a right-of-way without the consent of the property owner;

1. property owned, leased, or controlled by any department or agency of the Town used for public park, recreation or conservation purposes without the consent of the affected department or agency, excluding the placement of facilities on rights-of-way located in an affected department or agency's property; or
2. property owned by a rail carrier registered under federal law, MBTA Commuter Rail or any other public commuter rail service, or a utility, without the consent of the rail carrier, public commuter rail service, or utility. For the purposes of this subsection, "utility" has the meaning given to that term in M.G.L. c. 166, § 25A. Nothing in this section shall be construed to relieve any person from any requirement (a) to obtain a franchise or a commonwealth-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this section.

(I) Duration of Special Permit.

- a. Special Permits issued under this Section 7.3 expire within one (1) year of issuance, unless the Planning Board issues a certificate of renewal of the Special Permit. The certificate shall be issued after the equipment owner submits an affidavit which shall list, by location, all SWFs it owns within the Town of Hamilton and shall certify: (1) each such installation remains in use; (2) each such installation remains covered by insurance; and (3) each such installation remains unchanged in dimension and RF frequency from the year before.
- b. The equipment owner shall pay an annual re-certification fee of \$100 per facility for each facility that remains in use.
- c. Any SWF that is abandoned shall be removed by the owner within sixty (60) days of abandonment at owner's expense. Failure to do so will cause the Planning Board to refuse to issue a certificate of renewal to the equipment owner.