

Michael D. Borg
Director



Jorge O. Elorza
Mayor

DEPARTMENT OF PUBLIC WORKS

"Building Pride in Providence"

Friday, October 26, 2018

The Honorable David A. Salvatore
President, Providence City Council
Providence City Hall
25 Dorrance Street
Providence, Rhode Island 02903

Dear Council President Salvatore,

Enclosed please find the signed Small Wireless Facility Siting Rules for the City of Providence, which I submit for your information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Borg".

Michael Borg
Director, Department of Public Works

IN CITY COUNCIL
NOV 15 2018

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.
A handwritten signature in dark ink, appearing to read "Lori L. Borg".
CLERK

FILED

2018 OCT 30 P 4: 27

DEPT. OF CITY CLERK
PROVIDENCE, R.I.

CITY OF PROVIDENCE
SMALL WIRELESS FACILITY SITING RULES

WHEREAS, the Small Cell Siting Act of 2017, R.I. General Laws §39-32-1 et seq., set statewide standards for siting small wireless facilities on City owned poles in public rights of way.

WHEREAS, the City of Providence owns approximately 17,000 streetlight poles that it acquired under R.I. General Laws §39-30 and approximately 2,000 decorative lights.

WHEREAS, under R.I. General Laws §39-32-5, the City must establish by ordinance, regulation or rule, nondiscriminatory, competitively neutral and commercially reasonable rates, terms and conditions for collocation of small wireless facilities on poles in the public right of way that are consistent with the provisions of the Small Cell Siting Act.

WHEREAS, under R.I. General Laws §39-32-5, the City must authorize the collocation of small wireless facilities on structures not located within the public rights-of-way to the same extent the City permits access to such poles and structures for other commercial projects or uses.

a) *Definitions.*

“Applicant” is a wireless service provider authorized to do business in Rhode Island, or a contractor acting on its behalf, that files an application under these Rules.

“Regulated Pole” means a pole owned or controlled by the City in a public way including state highways and freeways and includes metal, composite, concrete, wood and decorative poles.

“City Structure” means a building, water tower, pole or other structure owned or controlled by the City, other than a Regulated Pole.

“Director” means the Director of the Department of Public Works.

“Small Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network.

“Small Wireless Facility License” or “License” means a license granted by the City for a small wireless facility under these rules.

“Wireless service” means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using wireless facilities.

“Wireless service provider” means a person who provides wireless service as well as a person who builds, installs, or maintains wireless communications transmission equipment, wireless facilities or wireless support structures in collaboration with a neutral third party contracted by the City.

“Neutral third party” means a single neutral host that will operate resources to be shared by multiple wireless service providers to achieve a multi-operator environment using different methods.

b) *Applicability.*

i) The rates, fees, terms and conditions established pursuant to these Rules shall apply to applications for Small Wireless Facilities submitted after the effective date of this ordinance. An agreement with the City for the installation and operation of Small Wireless Facilities on Regulated Poles in effect as of September 27, 2017, shall not be subject to these Rules unless and until that agreement expires or terminates.

ii) A wireless service provider authorized to do business in this state or a contractor acting on its behalf may collocate Small Wireless Facilities on Regulated Poles and may construct conduit, cables, and facilities between such Small Wireless Facility and other equipment or services located on or adjacent to the Regulated Pole, subject to the provisions of these Rules.

iii) Any Small Wireless Facilities installed on a Regulated Pole or a City Structure without a license issued under these Rules will be subject to a fine of not less than \$500 per day of wrongful attachment and the unauthorized Small Wireless Facilities will be subject to removal at the owner's expense.

c) *Regulation.*

i) An applicant to install Small Wireless Facilities on Regulated Poles or City Structures is a permitted use for all zoning districts, and is not subject to zoning review or approval. However, an applicant to install Small Wireless Facilities on Regulated Poles, City Structures, or any other location within the City of Providence must obtain any required building, electrical or public right-of-way use or work permits or any other permit required by the City of Providence deemed necessary for the installation and operation of any device attached to City owned infrastructure. Nothing more than a public right-of-way work permit is required for routine maintenance on a previously approved Small Wireless Facility on a Regulated Pole or to replace a Small Wireless Facility on a Regulated Pole with a facility of substantially similar or smaller size and weight.

- For electrical permit requirements see: <https://providenceri.viewpointcloud.com/#/1072/63800>
- For public right of way permits see https://www.providenceri.gov/wp-content/uploads/2016/09/Construction_Permit.pdf

ii) In the interest of the requirement to establish by ordinance, regulation or rule, nondiscriminatory, competitively neutral and commercially reasonable rates, terms and conditions for collocation of small wireless facilities, applications to the City will be accepted, processed, and approved per standards established by the City via a neutral third party. The neutral third-party will contract directly with the City and represent its interests.

iii) A Wireless Service Provider may install poles in the public rights-of-way in order to collocate Small Wireless Facilities, subject to approval by the neutral third party on behalf of the City. The neutral third party shall receive, process, and approve such requests on a non-discriminatory basis and in substantially the same manner and on substantially the same terms and conditions as it applies to similar requests by other communication service providers seeking to place poles in public ways.

iv) The neutral third party shall authorize the collocation of Small Wireless Facilities on City Structures under these Rules to the same extent the Director permits access to City Structures for other commercial projects or uses, and may authorize such collocation if the City has not previously permitted such access. Such collocation shall be subject to reasonable and nondiscriminatory rates, terms and conditions as provided by these Rules. The City will not charge on an annual recurring basis more for such a collocation than the amount charged for similar commercial projects or uses to occupy or use the same amount of space on similarly situated property.

d) *Application Process.* The neutral third party shall accept an application for, process and issue a permit allowed under these Rules as follows:

i) The neutral third party shall receive applications for, and process and issue Licenses for the City. The application form, to be developed by the neutral third party, will be found on the Department of Public Works website, including sufficient information to determine whether the collocation meets building codes, electrical codes, and standards for construction in the right-of-way; that it does not conflict with another permitted or City use at or near the location; and has been reviewed by the historic district commission if the collocation is within a historic district.

For historic districts see <https://www.providenceri.gov/planning/phdc-lhd-info/>.

ii) No application will be accepted or processed if, and as long as, the Applicant or any entity affiliated with the application has any unpaid and overdue tax bills or other fees such as those affiliated with police details or penalties pending payment with the City.

iii) The neutral third party, on behalf of the City, will assess a fee of \$100 to process an application to collocate a Small Wireless Facility, to be paid upon submission of the application.

iv) An applicant may file a consolidated application and receive a single permit to collocate Small Wireless Facilities at multiple locations within the City's jurisdiction. The neutral third party, on behalf of the City, may adjust the application fee to account for added processing costs of a consolidated application for multiple Small Wireless Facilities. An application for consolidated review will be subject to City review and approval of each individual attachment.

v) All Licenses regarding the collocation of Small Wireless Facilities are of unlimited duration. Initial construction must be completed within one hundred eighty (180) days after the License issuance date or the License will terminate, unless the City and wireless provider agree to extend.

vi) Small Wireless Facilities shall be in accordance with R.I.G.L. §39-32-1 et seq.

vii) All electrical components of the Small Wireless Facility shall conform to relevant and applicable local, state, and national codes, laws and regulations. To the greatest extent possible, all wiring shall be internal to the Regulated Pole or City Structure and external conduits shall not be allowed.

viii) An application for a License within a historic district shall be subject to historic district commission review and approval, in accordance with standards to be adopted by regulation or rule. Such standards may include that a collocation meet reasonable design, context, color and

stealth and concealment requirements and make reasonable accommodation for location within the district. The historic district commission may waive one or more standards upon a showing that the standard(s) are not reasonably compatible with the particular location of a small wireless facility, or that the standard(s) impose an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request for waiver. An application for a collocation license must comply with the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation. The City adopts that agreement for historic review of proposals to attach Small Wireless Facilities, deferring to federal and state government review only if and as long as such review is conducted.

ix) The installation shall comply with any emissions standards established by the Federal Communication Commission and shall not cause radio frequency radiation that could put the public, City workers or contractors in danger or expose them to emissions that require special conditions, training, or safeguards. An on/off switch must be provided or else the City reserves the right to disconnect the Small Wireless Facility at the base of the Regulated Pole or City Structure during maintenance activity, without notice.

x) The installation must not interfere with any signage or brackets used for the installation of banners.

xi) For instances where installation will require excavation, please note Utility excavations and restorations are governed by the "Standards to be Employed by Public Utility Operators when Restoring any of the Streets, Lanes, and Highways in Municipalities", pursuant to an order by the PUC on October 6, 2008. See attached order, Standards and other associated documents.

The Standards indicate methods and times (typically measured by duration after excavation) for restoration. In accordance with Section 4.1 of the Standards, "Section 24-5-1.1 of the RIGL requires any entity that alters a roadway to "restore that portion of the roadway which is altered to the same or better condition that existed prior to alteration." All restorations must be replaced in kind.

xii) If damage occurs, the wireless provider must repair any damage caused by the wireless provider to substantially the same condition. Additionally, in the event that a device is abandoned, the wireless provider must return City infrastructure to its original condition. If damage is not repaired within a timely manner after notice is provided, the City may make the repairs and charge the wireless provider the reasonable, documented, actual cost for the repair. If the damage causes an immediate safety hazard, the City may make the repairs and charge the wireless provider the reasonable, documented, actual cost of the repair.

xiii) A permit may require a collocation on a Regulated Pole that is a decorative pole to meet the following design standards as applied by the Department of Public Works in consultation with the Director of the Department of Planning and Development or its designee:

1. No portion of the Small Wireless Facility shall be higher than the lowest portion of the globe of the decorative light.

2. All components of the Small Wireless Facility will be internal to the decorative light with no exposed wiring, unless otherwise approved by the City. If the pole is too small then a larger base may be installed to hold the components if such base is aesthetically appropriate in that setting as determined by the City. Any such base shall be designed to match the design of the decorative pole, and be no larger than two (2) feet tall and no wider than the current base of the decorative pole. Any exposed portions shall be the same color as the decorative light pole.

xiv) No small wireless facility shall emit any buzz, hum, or other sound that is clearly audible to a person standing at the closer of (a) ten feet from the Regulated Pole or City Structure or; (b) at the property boundary nearest the pole.

e) *City Action on License Applications.*

i) Within fourteen (14) days after receipt of the application by the neutral third party, the neutral third party shall notify the Applicant in writing, on behalf of the City, either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application.

ii) The City will approve, via neutral third party, a complete application for a License for attachment to a Regulated Pole unless the collocation does not meet applicable building or electrical codes or, if applicable, standards for construction in the right-of-way or historic district standards or any other applicable standards pursuant to these Rules, provided such codes and standards are of general applicability. The City will document the basis for any denial, including the specific code provisions or standards on which the denial was based, and send the documentation to the applicant on or before the day the City denies an application. The Applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days of the denial without paying an additional processing fee. The City shall approve or deny the revised application within thirty (30) days. Any subsequent denial shall be limited to the deficiencies cited in the original denial. Where one or more locations addressed in a consolidated application do not meet the criteria of this section, the Director shall allow the application as to all other locations.

iii) An application shall be deemed approved if the City fails to approve or deny the application within sixty (60) days of submission. If the Director notifies the Applicant within fourteen (14) days after the initial submission that the application is incomplete and reasonably identifies at that time the information that is lacking, the time period stated above shall be tolled during the time it takes the Applicant to respond. No other request for additional information shall toll such time periods. Applications must be submitted in the form/standard established by the City.

iv) A person whose application or revised application for a license on a Regulated Pole is denied by the City may appeal to the superior court within thirty (30) days of the denial. The superior court shall have jurisdiction to determine all disputes arising under these Rules pursuant to R.I. Gen. Laws §8-2-14.

f) *License fee.*

i) In addition to the application processing fee, the licensee must pay an annual recurring fee of no more than one hundred and fifty dollars (\$150.00) or the rate produced by applying the formula adopted by the Federal Communications Commission for telecommunications attachments under 47 U.S.C. §224(e) for each collocation of a Small Wireless Facility on a Regulated Pole.

ii) In addition to the application processing fee, the licensee must pay an annual recurring fee of one thousand five hundred dollars (\$1,500.00) for each collocation of a Small Wireless Facility on a City Structure.

g) *Public Inquiries and Complaints.*

The applicant shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints about the Small Wireless Facility, conspicuously posted on the location of the attachment and included on all submissions and plans. The Applicant or its designee shall make reasonable efforts to respond to the public's inquiries and complaints within 72 hours and shall provide written copies of all complaints and the company's resolution or response to the Director upon request.

h) *Additional Terms.*

The Director is hereby authorized to develop and implement additional terms of agreement that are not addressed in these Rules, pursuant to the form attached hereto as Schedule 1. Within the first six(6) months and annually thereafter, the Director shall submit a report to the Providence City Council regarding small cell applications.

These Rules are effective upon adoption.

I hereby certify that the foregoing Rules were adopted on the 25th day of OCTOBER, 2018.

Attest:



Director of Public Works

SCHEDULE 1
LICENSE AGREEMENT FOR SMALL WIRELESS FACILITIES

