

DRAFT – Lenox Planning Board
Bylaw 8.18 Small Wireless Facilities in the Public Rights-of-Way
Latest edits: 8-18 with LF notations for 8-24 meeting; Format update 9-23-2021

Status Summary: This draft was last updated on 8-18, with notations by LF for 8-24 meeting. includes updates from earlier PB discussions. On 8-24, the Board opted to discontinue the review until a Needs Analysis and Wireless Communications Master Plan can be commissioned. 9-14-2021: PB agreed to post this latest draft online to accompany the update announcement about the planned Needs Analysis and Wireless Communications Master Plan; as such, certain sections (noted in document) that will be decided as a part of the Needs Analysis and Wireless Master Plan have been left blank for the time being.

8.18 SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Note to reviewers: This doc incorporates the dimensional requirements as per Joel Bard and includes outstanding questions from PB members for discussion and also a few edits. The Bylaw number has been changed to reflect the PB taking action on this doc prior to the Wireless Communications Facility bylaw. Current drafts have both bylaws numbered 8.18 because work on the Wireless Communications Bylaw was paused.

Summary of items for note/discussion:

- Suggested additional purpose statement
- Road terminology definitions added
- Dimensional requirements added (see 8.18.3)
- HDC language added to 8.18.6
- References to the “macro” bylaw at end of doc: 8.18.11

8.18.1. Purpose and Intent

The Town finds that it is necessary and beneficial for the health, safety, and welfare of the community to establish this bylaw to provide for the development of small wireless facilities (“small wireless facilities”) within the Town’s rights-of-way in order to ensure such development does not interfere with their usual and primary purposes, such as to facilitate safe travel. This bylaw (8.18) applies to the placement and operation of small wireless facilities within the rights-of-way, without regard to the type or owner of any vertical structure to which they are affixed or attached. The requirements of this bylaw (8.18) are not inclusive, but are in addition to all other applicable federal, state and local laws.

Commented [LF1]: Suggest adding: This bylaw addresses local concerns and how the Town will regulate applications and installations that are currently mandated under Federal law.

8.18.2. Definitions. As used exclusively in this section and in the Town of Lenox Standard Specifications and Details Manual for Small Wireless Facilities in Rights-of-Way (the “Procedure Manual”), as amended:

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

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thereunder.

antenna - communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of wireless services.

applicable codes - building, plumbing, electrical and fire codes adopted by Massachusetts or the Town; requirements of the National Electric Code or the National Electric Safety Code; and the applicable laws, regulations and requirements of the Federal Communications Commission, the Occupational Safety and Health Administration, as well as any other local, state, or federal agency regulating wireless communications, as any may be amended from time to time.

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 “Small Wireless Facility Application Form” including all its required exhibits and submittals, and review fee submitted to the Department of Public Works requesting a permit to install and/or operate a small wireless facility (SWF) within any Right-Of-Way whether:

- To collocate a SWF on an existing utility pole or wireless support structure;
- To install a new utility pole or wireless support structure; or
- To install modifications or modify operation of any existing SWF.

arterials –roadways that serve as the primary connection between towns, cities, regions and bordering states.

collector streets - roadways designed to connect the arterial network with local roadways, and collect the vehicular traffic from the intersecting minor streets.

collocate or collocation - to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

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 services, 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.

concealed facility - a small wireless facility that is designed in a manner that it is not readily identifiable as a wireless communications facility, and further is designed to be aesthetically compatible with existing building(s) and uses on a site and in the neighborhood or similar area. In the public rights-of-way, a concealed facility is generally a pole designed to resemble another structure that is common in the area

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such as a traditional or decorative light standard or traffic signal or utility pole comparable in size with the height and girth of existing structures in the area.

cul de sac – a street or passage closed at one end.

days - as used herein, days shall mean calendar days inclusive of weekends and holidays.

FCC - the Federal Communications Commission of the United States.

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

historic district - a district, building, property, or site, or group of buildings, properties, or sites that are designated as an historic district by the Town as set forth in the Lenox Historic District Bylaw.

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 (including applicable codes, as defined above), ordinance, order, or rule.

local street - a street that provides access to adjacent land use, serves local trip purposes and connects to collector and arterial streets.

major street - means a local thoroughfare that carries crosstown traffic from several neighborhoods, thereby servicing several residential collector streets.

marginal access street - a local street which is parallel to and adjacent to a major street and which provides access to abutting properties and protection from through traffic.

modification – a change of equipment or design to an existing small wireless facility that involves the addition of new equipment, the exchange of new equipment for existing equipment where the new equipment has a greater weight or larger size than the existing equipment, the addition of any new transmission lines or replacement of existing transmission lines with new lines of greater dimension, or the increase in any amount of the height or girth of the small wireless facility.

permit - a written authorization that must be obtained by the applicant from the Town to perform an action or initiate, continue, or complete a small wireless facility in the Town's Rights-of-Way.

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, Massachusetts,

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the Town, any other unit of state or local government, or a special purpose district located in whole or in part within Massachusetts 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 for use of the Town's Rights-of-Way in accordance with all state and federal rules.

right-of-way – the area on, below, or above a public roadway, highway, street, public sidewalk, or alley dedicated for public use, as shown on the official map of the Town, as it may be amended from time to time. "Right-of-way" does not include Town-owned aerial lines.

small wireless facility – a wireless communications facility that meets both of the following qualifications:

- (i) each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
- (ii) all other ancillary wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

town utility pole – a utility pole owned by the Town in the right-of-way.

utility pole – a pole or similar structure that is used or to be used in whole or in part for electric distribution, lighting, traffic control, communications, or a similar function.

wireless communications facility – means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

- (i) equipment associated with wireless communications; and
- (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless communication facility" includes small wireless facilities. "Wireless communications facility" does not include (i) the structure or improvements on, under, or within which the equipment is collocated or (ii) wireline backhaul facilities.

wireless infrastructure provider - any person authorized to provide telecommunications services in Massachusetts that builds or installs wireless communications transmission

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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 Town;

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 it is using wireless facilities;

wireless services provider - a person who or company which 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 small wireless facilities within the Town right of way. "Wireless support structure" does not include a utility pole;

8.18.3. Development Standards

(1) Small wireless facilities only may be installed or subsequently modified within the right-of-way on new or existing utility poles or wireless support structures and in accordance with this Section 8.18. All small wireless facilities eligible for administrative approval under this Section 8.18 shall:

- not exceed the size dimensions of the small wireless facility definitions;
- be designed as concealed facilities;
- be subject to the development standards and procedures set forth in the Procedure Manual.

(2) New utility poles or wireless support structures shall be designed to be consistent with the design parameters herein and as established in the Procedure Manual for the subject location, or in the absence of such design guidance, be consistent with 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) Placement of small wireless facilities within the rights-of-way on Town collector streets, cul-de-sacs, local streets, and marginal access streets shall be prohibited unless the applicant cannot otherwise provide services to a particular customer or customers without doing so, and the ability to place facilities on such rights-of-way is necessary to accomplish requirements of nondiscriminatory treatment of the applicant in relation to the Town's treatment of other wireless services providers. In such circumstances, the applicant shall include with its application sufficient evidence, consistent with industry standards, to justify such placement.

(4) Small wireless facilities shall be collocated on existing utility poles or wireless support structures where technically feasible. Where not technically feasible, and where a right-of-way has residential or commercial structures on only one (1) side, the small wireless facilities shall be located on the opposite side of the right-of-way whenever possible. In a right-of-way with residential or commercial uses on one (1) or both sides,

Commented [LF2]: Dimensional requirements previously in the Procedure Manual moved to the Bylaw per Joel Bard's rec.

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utility poles, equipment, antennas or other structures shall be placed as close as possible to the left or right side of the applicable property line of said residential or commercial structure so as to minimize obstructing the view from or to such structures, and located, when commercial and residential uses are present on the same right-of-way, adjacent to a commercial use instead of a residential use, where possible.

(5) No new small wireless facility shall be permitted to be located in a public right-of-way, and no collocated small wireless facility in a public right-of-way shall be permitted to be located in a public right-of-way in such a manner that it will interfere with the normal existing flow of pedestrian traffic; will create a safety hazard; will cause the right-of-way to be in violation of the requirements of the ADA regarding accessibility of pedestrian walkways; will obscure or interfere with vehicular traffic views of pedestrians occupying the right-of-way; will be located within *XX* feet (*TBD*) of a residence (or such lesser distance equal to *XX to be determined*) or where the Town has or plans to have underground utility structures which would be adversely affected by installation of a new or collocated small wireless facility.

Commented [LF3]: FYI: rresetback designation. Height is specified in item 7

(6) New small wireless facilities on a new or replacement utility pole shall be designed to contain all antenna and ancillary equipment and meters inside the pole or shall be concealed by a shroud on the outside of the pole that is painted to match the color and style of the pole. For small wireless facilities collocating on existing utility poles, all cables and surface mounted wires shall be enclosed within conduit or a similar cable cover shall be painted to match the structure it is mounting.

(7) Height. New small wireless facility towers or replacement private or Town utility poles shall not exceed the greater of forty-five (45) feet above ground level or ten (10) feet above the height of existing utility poles located in the same right-of-way. Collocating small wireless facilities on an existing structure shall not extend more than ten (10) feet above the private or Town utility pole, or wireless support structure on which it is collocating.

(8) Neutral Host Antenna. Any new or collocating small wireless facility located in the public right-of-way shall be technically capable of servicing a minimum of four (4) wireless service providers with like technical facilities through the use of neutral host antenna.

(9) Depiction. A photo rendering shall be provided of the proposed antenna that depicts aesthetic features including, but not limited to, the use of colors, concealment, screening and buffering.

(10) Spacing Requirements. To enhance physical safety and minimize the adverse visual impacts associated with the proliferation and clustering of antennas and associated above-ground small wireless facility, no new small wireless facility in the ROW shall be located within two hundred (200) feet of any existing utility pole or existing wireless support structure which the applicant has the right to use on reasonable terms and conditions and which does not impose technical limitations or material additional costs on the applicant. If an applicant is unwilling to meet this requirement, the applicant shall

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provide written certification from a professional engineer licensed in Massachusetts as to the unavailability of the existing alternative, the unreasonable terms and conditions, the technical limitations or material additional costs precluding use of the existing alternate structure.

(11) Completion and Activation. New small wireless facilities and collocated small wireless facilities shall be completed and activated for use by a wireless services provider within six (6) months of approval, unless the Town and the wireless services provider agree in writing to extend this period or a delay is caused by a lack of commercial power at the proposed site, in which case the applicant shall request an extension of time within sixty (60) days of initial permit issuance to accommodate lack of commercial power and the site shall be completed and activated for use by a wireless services provider within one (1) year of approval.

(12) Abandoned small wireless facilities shall be removed within 90 days of abandonment. Should the wireless services provider fail to remove the facility within this time period, the Town may have the facility removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless service provider. A wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility by notice to the Town or the date that is 365 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the Town reasonable evidence that it is diligently working to place such wireless facility back in service.

8.18.4. Application Submittal Requirements. Applicants for small wireless facilities shall submit all information and material detailed in the Town of Lenox Standard Specifications and Details Manual for Small Wireless Facilities in Rights-of-Way (“Procedure Manual”) with their application on the Town’s small wireless facilities application form.

8.18.5. Application Approval Process. Following submittal of an application as set forth above, applications for small wireless facilities shall be processed as set forth in the Procedure Manual.

(1) The Town will issue a separate permit for each location that is approved. The Town may remove a small wireless facility from a consolidated application and treat separately small wireless facility locations for which incomplete information has been provided or that are denied.

(2) The Town may deny a small wireless facility application on the basis that it does not meet one (1) or more of the requirements below:

(A) Applicable codes; or

(B) Town ordinances and regulations, including but not limited to the Procedure Manual, or objective design standards that concern public safety, traffic safety, and aesthetic concerns for decorative Town utility poles, including reasonable and nondiscriminatory concealment requirements such as screening or

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landscaping for ground-mounted equipment, as set forth in the Procedure Manual;
or

(C) Public safety and reasonable spacing requirements, as set forth in the Procedure Manual, concerning the location of ground-mounted equipment in a right-of-way, including ADA compliance; or

(D) For small wireless facilities to be located in the right-of-way in a historic district, any historic preservation requirements as set forth in 8.18.6 below.

(3) If the Town denies an application, then the Town must:

(A) Document the basis for a denial, including, as applicable, the specific bylaw provisions on which the denial was based;

(B) Send the determination to the applicant within one business day of a written determination.

8.18.6. Small Wireless Facilities in Historic Districts. Any application proposing the installation of small wireless facilities within a designated historic district shall comply with the following requirements in addition to those generally applicable above and in the Procedure Manual:

(1) *No Small Wireless Facilities within the Historic District shall be constructed or altered in any way that affects its exterior appearance, unless the Lenox Historic District Commission shall first have issued a Certificate of Appropriateness, a Certificate of Hardship, a Certificate of Non-Applicability, or the Commission's review is limited by Section 9 of the Lenox Historic District Bylaw with respect to such construction or alteration.*

Commented [LF4]: Addition recommended by HDC- needs PB approval

(2) 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.

(3) New utility poles or wireless support structures shall be designed to match the size, girth, and design of any existing utility poles or other wireless support structures located in the historic district right-of-way, i.e. decorative or Westinghouse-style light poles or banner poles;

(4) This subsection shall not be construed to limit the Town's enforcement of historic preservation in conformance with the requirements adopted pursuant to the National Historic Preservation Act of 1966, 54 U.S.C. § 300101 *et seq.*, and the regulations adopted to implement those laws.

8.18.7 Interference with Public Safety Communications.

(1) Certification Required. Applicants for small wireless facilities shall certify in

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their application through a qualified radio frequency engineer that operation of the small wireless facilities, including under maximum licensed operating parameters, will not cause interference with the frequencies used by the Town, state, 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, and update same as needed. The applicant shall provide evidence of the certifying engineer's qualifications to make such certification.

(2) Independent Testing. Any permit issued by the Town for a small wireless facility shall be subject to final testing for frequency and power output levels by the Town after installation and activation to determine whether the small wireless facility creates unacceptable interference to any public safety system. At the reasonable request of the Town, the small wireless facility provider shall engage the small wireless facility at maximum operating parameters for such period as required for Town to conduct its testing for interference. Such testing shall be at the expense of the Town but shall be reimbursed by applicant if the testing reveals unacceptable interference.

(3) Applicable Standards.

(A) A wireless services provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with the Town's or 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.

(B) 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.

(C) The Town 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 as amended from time to time.

(4) Emergency Contact. The owner or operator of a small wireless facility shall provide the Town's Public Works Department 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

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provider or wireless infrastructure provider in the event of an emergency or exigent circumstance. The owner or operator shall update this list thereafter as necessary. If the contact list is not current, or 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 or operator of the small wireless facility or any wireless services provider arising from such actions.

8.18.8. Application Fees and Supplemental Review.

- (1) The fees set forth in the Town of Lenox Fee Schedule, payable to the Town, shall accompany applications for small wireless facilities.
- (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, provided that the wireless services provider notifies the Town at least ten (10) days prior to the planned maintenance and/or replacement and provides to the Town equipment specifications for the replacement of equipment consistent with the requirements of this section. 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 Town reserves the right to require a supplemental review by independent experts for any application for a small wireless facility under Section 8.18 where the complexity of the analysis requires technical expertise, and/or for any request to vary a standard under this Section 8.18. All the costs of such review shall be borne by the applicant, in addition to scheduled fees.
- (4) Whether based on the results of the supplemental review or the Town's own review, the Town 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 8.18, the Procedural Manual, and other applicable law.
- (5) Once an application has been determined complete, as provided in section 8.18.5(2) or no determination has been made within the ten-day period, no requests by the Town to change an application or provide supplemental material will toll or reset the applicable shot clock provided in the Procedure Manual.

8.18.9. Rates for use of Town Utility Poles within the Right-of-Way. An applicant who places a small wireless facility on a utility pole owned by the Town within a right of way in

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accordance with this Section 8.18 shall (a) execute a license agreement with the Town and (b) pay to the Town an annual recurring rate as set forth in the Town of Lenox Fee Schedule for the use of such utility pole.

8.18.10 Required Permit Provisions. Each permit issued by the Town 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 Town, 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, including but not limited to the Procedure Manual, 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 Berkshire County, Massachusetts shall have exclusive jurisdiction to resolve all disputes arising under this section, applying the laws of Massachusetts. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on utility poles within the right-of-way, the Town shall allow the collocating party to collocate on utility poles at annual rates as set forth in the Town of Lenox Fee Schedule.

8.18.11 Exceptions to Applicability. Nothing in this section authorizes a party to locate small wireless facilities on:

- (1) property owned by a private party that is not located within the rights-of-way and compliance with Bylaw 8.18;
- (2) privately owned utility pole or wireless support structure within a right-of-way without the consent of the property owner and compliance with this Bylaw 8.18; or
- (3) 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, and compliance with Bylaw 8.18, excluding only the placement of facilities on rights-of-way located in an affected department or agency's property.

Commented [ATL5]: This is a reference to macro bylaw – do we retain it or say...and compliance with any other Town Bylaw regulating wireless communications infrastructure.”

Commented [ATL6]: This is also a cross reference to the macro bylaw, which will come later – do we say 8.19 now or use some other generic language i.e.and compliance with any other Town Bylaw regulating wireless communications infrastructure.