

**ORDINANCE NO. 2018-17**

**AN AMENDMENT TO THE  
ORDINANCES OF THE TOWN OF BARRINGTON  
CHAPTER 182 WIRELESS FACILITIES, ARTICLE I, SMALL CELL FACILITIES**

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**Section 1. Definitions**

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (a) **"Town Facilities"** means Town-owned Existing structures located within the Public way. Town Facilities may include, by means of example, Town-owned light poles and Town-owned traffic signal poles and structures.
- (b) **"Town Property"** means and includes all real property owned by the Town, other than Public streets and utility easements, as those terms are defined herein, and all property held in a proprietary capacity by the Town, which are not subject to right-of-way franchising as provided by law. Town property includes, but is not limited to, Town Facilities.
- (c) **"Collocation"** means to install, mount, maintain, modify, operate, or replace wireless facilities on a pole, including an authority pole, or on a building, water tower or other structure, including an authority structure.
- (d) **"Existing structure"** means any structure within a Public way that is installed or approved for installation at the time a Wireless Services Provider or Wireless Infrastructure Provider provides notice to the Town of an agreement with the owner of the structure to Co-locate equipment on that structure. "Existing structure" includes any structure within a Public way that is currently supporting, designed to support, or capable of supporting the attachment of Wireless Facilities, including towers, buildings, Utility poles, light poles, flag poles, signs, and water towers.
- (e) **"FCC"** or **"Federal Communications Commission"** means the Federal administrative agency, or lawful successor, authorized to regulate and oversee Wireless Service Providers on a national level.
- (f) **"Maintenance"** means any effort or expenditure taken or made to preserve, repair, or improve existing Wireless Facilities or infrastructure in accordance with generally accepted industry standards.
- (g) **"Micro-Wireless Facility"** means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

- (h) **"Overhead facilities"** means Utility poles, public utility facilities and Wireless Facilities located above the surface of the ground, including the underground supports and foundations for such facilities.
- (i) **"Person"** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.
- (j) **"Public street"** means the surface of and the space above and below any public street, road, highway, avenue, sidewalk, way, bridge, viaduct, alley or other public right-of-way, including non-paved surfaces, now or hereafter held by the Town for the purpose of public travel, communications, alarm, street lighting, power distribution, water or sewer easements or similar public use.
- (k) **"Public way"** means and includes all Public streets now or hereafter held or controlled by the Town, but only to the extent of the Town's right, title, interest or authority to grant a License to occupy and use such streets and easements for communications facilities.
- (l) **"Replacement Utility Pole"** means a new Utility pole installed by an agreement between Grantee and the owner of an existing Utility pole pursuant to which the Grantee removes the existing pole and replaces it with the new pole in substantially the same location, with the ownership of the new pole vesting in the owner of the existing pole.
- (m) **"Small Cell Facility"** means a wireless facility with an antenna of no more than six (6) cubic feet in volume and associated equipment with a cumulative volume no larger than twenty-eight (28) cubic feet. The following types of associated equipment may be located outside the primary enclosure and are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, backup power system, grounding equipment, power transfer switch, cut-off switch, and cable and conduit runs for the connection of power and other services. Equipment that is concealed from public view within or behind an existing structure or concealment is not included in the volume calculations.
- (n) **"State"** means the State of Rhode Island.
- (o) **"Underground facilities"** means utility or Wireless Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead facilities.
- (p) **"Utility pole"** means a structure owned, operated, or owned and operated by a public utility, local government, or the State that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.
- (q) **"Wireless Facility" or "Facilities"** means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to:

- (i) Equipment associated with wireless services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and
  - (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term "wireless facilities" includes small wireless facilities but does not include the structure or improvements on, under or within which the equipment is collocated; wireline backhaul facilities; coaxial or fiber-optic cable that is between wireless support structures or poles; or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.
- (r) **"Wireless Facilities Franchise"** means the non-exclusive, revocable license granted to Grantee in this Agreement to use the Public ways of the Town for the purposes of constructing, installing, using, maintaining testing, inspecting, operating, repairing, and removing Wireless Facilities pursuant to and in accordance with this Agreement.
- (s) **"Wireless Infrastructure Provider"** means any person, including a person authorized to provide communications service in the state, that builds or installs transmission equipment, Wireless Facilities, or Wireless Support Structures, but that is not a Wireless Services Provider.
- (t) **"Wireless Services"** means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through Wireless Facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using Wireless Facilities.
- (u) **"Wireless Services 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.
- (v) **"Wireless Support Structure"** means a freestanding structure, such as a pole, monopole, tower, either guyed or self-supporting, or suitable Existing structure or alternative structure designed to support or capable of supporting Wireless Facilities. "Wireless Support Structure" does not include any telephone or electrical Utility pole or any tower used for the distribution or transmission of electrical service.

## **Section 2. Purpose and Scope**

- (a) The purpose of this Ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in Public Ways within the jurisdiction of the Town, which will provide a public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Town Public Ways and the Town as a whole.
- (b) It is the intent of this Ordinance to establish uniform standards to address issues presented by Small Wireless Facilities including, but not limited to:

- i. Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places; and,
- ii. Prevention of the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; and,
- iii. Prevention of interference with other facilities and operations of facilities lawfully located in the Town Public Ways or public property; and,
- iv. Protection against environmental damage, including damage to trees or shrubbery including, but not limited to, those items planted pursuant to Town landscaping, zoning, tree preservation, or other Town policies; and,
- v. Preservation of the character of neighborhoods in which Wireless Facilities are installed; and,
- vi. Preservation of the historical character of historic structures, or historic neighborhoods; and,
- vii. Facilitation of the rapid deployment of Small Cell Facilities to provide the citizens with the benefits of advanced wireless services.

**Section 3. Permitted Use; Application Process.**

- (a) Collocation of a Small Cell Facility or a new or modified Utility Pole or Wireless Support Structure for the Collocation of a Small Cell Facility shall be a permitted use, subject to the restrictions in Section 5 of this Chapter.
- (b) No person shall place a Small Cell Facility in the Public Way without first filing an application and obtaining a permit, except as otherwise provided in this ordinance.
- (c) At its discretion, an Applicant may file one consolidated application to receive a single permit to Collocate Small Cell Facilities at multiple locations within the Town. Where one or more locations addressed in a consolidated Application do not meet the criteria of this Chapter, the Town shall allow the Application as to all other locations.
- (d) All Small Cell Facility applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, as required by the Town.
- (e) The Small Cell Facility permit application shall be made by the Wireless Services Provider, or its duly-authorized representative, and shall contain the following:
  - i. The Applicant's name, address, telephone number and e-mail address;
  - ii. The Names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Application with respect to the filing of the Application;
  - iii. A general description of the proposed work and the purposes and intent of the Small Cell Facility;
  - iv. Verification from an appropriate professional that the Small Cell Facility shall comply with all applicable codes.
- (f) Routine Maintenance and Replacement. An application shall not be required for:
  - i. Routine maintenance;
  - ii. The replacement of a Small Cell Facility with another Small Cell Facility that is substantially similar or smaller in size, weight, and height;
  - iii. Provided, however, on a location where the Town or another provider has placed equipment or facilities, any routine maintenance or replacement that

is done shall not occur until written authorization to proceed is provided from the Town, which authorization shall not be unreasonably withheld.

- (g) Interference with Public Safety Equipment. A Small Cell Facility shall be operated and maintained in a manner that does not interfere with public safety equipment.

#### **Section 4. Action on Permit Application**

- (a) The Town shall review the application for a Small Wireless Facility permit in light of its conformity with applicable regulations of this ordinance, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:
  - i. Within ten (10) days of receiving an Application, the Town shall determine and notify the Applicant:
    - A. Whether the Application is complete;
    - B. If the Application is incomplete, what specific information is missing.
  - ii. If the Application is deemed incomplete, the Applicant may cure the deficiencies identified by the Town and resubmit the Application within thirty (30) days of the denial without paying an additional processing fee.
- (b) The Town shall make its final decision to issue or deny the permit within sixty (60) days of the submission of a complete Application.
- (c) The Town shall notify the Applicant in writing of its final decision, and if the Application is denied:
  - i. Specify the basis for denial; and,
  - ii. Cite specific code provision from Federal, State, or local codes provisions as to why the Application was denied.

#### **Section 5. Effect of Permit**

- (a) A permit from the Town authorizes an Applicant to undertake only certain activities in accordance with the ordinance, and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others who may already have an interest in the Public Ways.
- (b) Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this ordinance shall be valid for a period longer than one hundred and eighty (180) days, unless both the Town and the Applicant agree to a reasonable extension and all required fees are paid for the term regardless of construction.

#### **Section 6. Removal, Relocation or Modification of a Small Cell Facility in the Public Way**

- (a) In the interest of public health and safety and welfare consistent with the Town's ordinances and plans, the Town may make or cause to be made improvements, repairs, or replacements of the public facilities located on Public Ways. Such construction activity commonly requires adjustment or relocation of public utilities. The Town deems the right of public utilities to use Public Ways to be permissive and subordinate to the reasonable exercise of the Town's police power. Thus, the cost of relocating a public utility installation shall not be borne by the Town.
- (b) The Town retains the right to cut or move any Small Cell Facility located within its Public Ways as the Town, in its sole discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the

Town shall notify the Wireless Provider an opportunity to move its own facilities prior to the Town cutting or removing a facility.

- (c) Upon abandonment of a Small Cell Facility with the Town Public Ways, the Wireless Services Provider shall notify the Town within ninety (90) days of such abandonment.
- (d) At any point where a Wireless Services Provider fails to pay necessary fee, or annual payment to the Town, and fails to respond within sixty (60) days to a written inquiry from the Town as to whether the Wireless Services Provider intends to continue to operate, the Small Cell Facility shall be deemed abandoned and the Town may, at its sole option, remove all or any portion of the Small Cell Facility.

**Section 7. Fees and Rentals**

- (a) Application Fees. Unless otherwise provided by law, all applications for permits pursuant to this Chapter shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the Town related to processing the application, but shall not exceed One Hundred Dollars (\$100.00) each for up to five (5) Small Cell Facilities addressed in the application and Fifty Dollars (\$50.00) for each additional Small Cell Facility.
- (b) Annual Rate. The rate to place Small Cell Facilities on a Town-owned pole in the Public Way shall be One Hundred and Fifty Dollars (\$150.00) per year. Such compensation, together with the application fee, shall be the sole compensation that the Wireless Services Provider shall be required to pay the Town.
- (c) A Wireless Services Provider is authorized to remove its facilities at any time from the Public Ways and cease paying the Town compensation for use of the Public Ways as of the next due date for payment following the removal.

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This ordinance shall take effect upon passage.

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Council Member

Filed: October 29, 2018

Introduced: November 5, 2018

Amended:

Adopted:

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