

DRAFT MODEL CODE FOR MUNICIPALITIES
Federal Communications Commission
Broadband Deployment Advisory Committee
Model Code for Municipalities Working Group

NOTE: SEE APPENDIX A FOR IMPORTANT DRAFTERS' EXPLANATION.

NOTE: WHEN CONSIDERING ADOPTION OF THIS MODEL CODE, LOCAL GOVERNMENTS SHOULD CONSIDER THAT THERE MAY BE FEDERAL, STATE OR LOCAL LAWS THAT COULD LIMIT OR OTHERWISE AFFECT VARIOUS TERMS AND PROVISIONS SET FORTH HEREIN. CIRCUMSTANCES OF EACH LOCAL GOVERNMENT MAY REQUIRE MODIFICATIONS OF THIS MODEL CODE AND LEGAL REVIEW IS STRONGLY ADVISED PRIOR TO ADOPTION.

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Article I. Short Title and Definitions

Section 1.1 Short Title.

This Chapter is titled the “Encouraging Broadband Deployment Ordinance,” and amends all applicable provisions of the [city/town/etc charter/code] and existing local laws relating to the subject matter of this Chapter.

Section 1.2 Definitions.

- a. **“Administrative Review”** – means ministerial review of an Application by the Authority relating to the review and issuance of a Permit, including review by the [building, planning or zoning administrator, or other [City] staff or designee] to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter. This process does not involve the exercise of discretion. Either the issuance of a Permit is in conformity with the applicable provisions of this Chapter or it is not. This process is not subject to a public hearing.
- b. **“Antenna”** means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services or other wireless communications. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- c. **“Applicable Codes”** means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Authority or otherwise are applicable in the jurisdiction.
- d. **“Applicant”** means any Person who submits an Application.
- e. **“Application”** means a written request submitted by an Applicant (such as the form annexed hereto as Appendix B) to an Authority for a Permit (i) to locate or Collocate, or to modify, a Communications Facility underground or on any existing Support Structure, Pole or Tower, or (ii) to construct or modify a new Support Structure, Pole or Tower or any other structure on which a Communications Facility will be collocated.
- f. **“Authority”** means the [city/town/etc of _____] or any agency, county, municipality, district, subdivision or any instrumentality thereof, including, but not limited to public utility districts, or municipal electric utilities. The term shall not include state courts having jurisdiction over an Authority.
- g. **“Authority Pole”** means a Pole owned, managed or operated by or on behalf of an Authority.
- h. **“Base Station” or “Wireless Facility”** is defined as provided below (see definition of “Wireless Facility”).

- i. **“Collocate”** means to install, mount, maintain, modify, operate and/or replace a Communications Facility on an existing Support Structure, Pole, or Tower or any other structure capable of supporting such Communications Facility. “Collocation” has a corresponding meaning.
- j. **“Communications Facility”** means, collectively, the equipment at a fixed location or locations that enables FCC-licensed or FCC-authorized communications between user equipment and a communications network, including: (i) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing.
- k. **“Communications Service Provider”** means a cable operator, as defined in 47 U.S.C. § 522(5), a provider of information service, as defined in 47 U.S.C. § 153(24); or a provider of telecommunications service, as defined in 47 U.S.C. § 153(53).
- l. **“Decorative Pole”** means an Authority Pole that is specially designed and placed for aesthetic purposes.
- m. **“Deployables”** means a portable, self-contained Wireless Facility that can be moved to a specified location or area and provide Wireless Services on a temporary or emergency basis such as a “cell on wheels” or “COW,” “cell on light truck” or “COLT,” tethered balloon, tethered drone or other unmanned device.
- n. **“Discretionary Review”** means review of an Application by the Authority relating to the review and issuance of a Permit, that is other than an Administrative Review. Discretionary Review involves discretion on the part of the Authority (subject to any applicable limits on such discretion) in determining whether to issue a Permit and is typically subject to one or more public hearings or meetings.
- o. **“FCC”** means the Federal Communications Commission of the United States.
- p. **“Fee”** means a one-time, nonrecurring charge, whether a fixed amount or cost-based amount based on time and expense.
- q. **“Historic Property”** means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the United States Secretary of the Interior (in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C).
- r. **“Law”** means any federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- s. **“Non-Authority Pole”** means a Pole not owned, managed or operated by or on behalf of an Authority.

- t. **“Ordinary Maintenance and Replacement”** of a Communications Facility and/or the associated Support Structure, Pole or Tower includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity, and/or the replacement or upgrade of Antennas and/or other components of a Communications Facility, with Antennas and/or other components similar in color and other aesthetics and in aggregate size so long as the Support Structure, Pole or Tower will structurally support, or can be modified to support, the structural load.
- u. **“Permit”** means a written authorization (in electronic or hard copy format) required by an Authority to perform an action or initiate, continue, or complete installation of a Communications Facility, or an associated Support Structure, Pole, or Tower.
- v. **“Person”** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an Authority.
- w. **“Pole”** means a pole, such as a utility, lighting, traffic, or similar pole, not exceeding [50] feet in height above grade, made of wood, concrete, metal or other material, located or to be located within the Public Right of Way or a Private Easement. A Pole does not include a Tower or Support Structure.
- x. **“Private Easement”** means the area on, below, or above privately-owned property that has been designated for use as or is used for a utility purpose (such as for electric, cable or other utility purpose), and is typically recorded in the land records of the [City] pursuant to a recorded plat, easement or right of way, and does not include any portion of a Public Right of Way.
- y. **“Public Right of Way” or “Public ROW”** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, but not including a federal interstate highway or other area not within the legal jurisdiction, or within the legal maintenance responsibility of the municipality.
- z. **“Rate”** means a recurring charge.
- aa. **“Replacement”** means, in connection with an existing Pole, Support Structure or Tower, replacement of same with a new structure, similar in design, size and scale to the existing structure and in conformance with current [City charter/code regulations], in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility. In connection with replacement of a Pole or Tower to support Collocation of a Wireless Facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.40001 Subpart b(7).
- bb. **“Small Wireless Facility”** means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider’s Antenna (including, without limitation, any strand-mounted Antenna) could fit within an enclosure of no more than ___ () cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than _____ () 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, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services.

- cc. **“State”** means the [State/Commonwealth] of _____.
- dd. **“Support Structure”** means a building, a billboard, a water tank or any other structure to which a Communications Facility is or may be attached. Support Structure does not include a Pole or a Tower.
- ee. **“Tower”** means any structure built for the sole or primary purpose of supporting a Wireless Facility. Tower, such as a self-supporting Tower, a monopole, a lattice or a guyed Tower. Tower also includes a structure designed to conceal from the general public the Wireless Facility. A tower does not include a Pole or a Support Structure.
- ff. **“Wireless Facility” or “Base Station”** means a Communications Facility installed and/or operated by a Wireless Provider. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one example of a Wireless Facility.
- gg. **“Wireless Infrastructure Provider”** means any Person, including a Person authorized to provide telecommunications service in the State, that builds or installs and/or operates Wireless Facilities or Poles, Towers or Support Structures on which Wireless Facilities are or are intended to be used for Collocation, but that is not a Wireless Services Provider.
- hh. **“Wireless Provider”** means a Wireless Infrastructure Provider or a Wireless Services Provider.
- ii. **“Wireless Services”** means personal wireless services as that term is defined in 47 U.S.C. § 332(c)(7)(C)(i).
- jj. **“Wireless Services Provider”** means a Person who provides Wireless Services.

Article II. Governance of Deployment in the Public ROW

Section 2.1 General provisions of Agreement for Access to Public ROW

- a. Municipal Agreement. [ADD FOLLOWING PROVISION REQUIRING MUNI AGREEMENT ONLY IF REQUIRED BY THE AUTHORITY FOR ALL OCCUPANTS DESIRING TO INSTALL COMMUNICATIONS FACILITIES IN THE PUBLIC ROW] Prior to receiving a Permit to install a Communications Facility in the Public ROW, each Applicant shall be required to enter into a Municipal Agreement [e.g., Franchise Agreement, Right of Way Agreement, Pole Attachment Agreement, License Agreement] between the Authority and the Applicant, on terms and conditions substantially the same for all Applicants and existing occupants. The terms and conditions of such Municipal Agreement will include the following:

[TBD - FOLLOWING ARE EXAMPLES ONLY OF POTENTIAL FEES AND RATES]

[NOTE - IF NO MUNI AGREEMENT REQUIRED, THEN CONVERT SECTION 2.1 HEADING TO “**FEES AND RATES**” AND ADD TEXT STATING “**THE FOLLOWING FEES AND RATES SHALL BE PAID BY AN APPLICANT, AS MORE PARTICULARLY SET FORTH IN THIS CHAPTER**”]

- (i) **Application Fee**, shall be [\$____] for a single Permit, and [\$____] for multiple Permits of up to [YYY] number of similar Applications submitted simultaneously by a Wireless Provider or any other Communications Service Provider to an Authority.
 - (ii) **Make-Ready Fee**, determined on a site-specific, engineering basis, for work reasonably necessary to make a particular Authority Pole suitable for attachment of the applicable Communications Facility.
 - (iii) **Annual ROW Rate**, shall be [\$____] for occupancy of the Public ROW by the Applicant.
 - (iv) **Generally applicable, non-discriminatory Fees**, such as Electrical permits, Building permits, or street opening permits.
 - (v) **Annual Attachment Fee**, for attachment to an Authority Pole in the amount of [\$____].
 - (vi) [Specify Other, if any].
 - (vii) An Applicant shall not be subject to any municipal Fees or Rates, other than those expressly cited above.
- b. Other Terms.
- (i)
 - (ii)

(iii)

(iv)

(v)

Section 2.2 Permitted Communications Facility Uses/Administrative Review; Application and Fees

- a. Permitted Use: The following uses within the Public ROW shall be a permitted use, subject to Administrative Review only and issuance of a Permit as set forth in this Section 2.2:
- (i) Collocation of a Small Wireless Facility;
 - (ii) Modification or replacement of a Pole, Tower or Support Structure for Collocation of a Communications Facility, provided that, to the extent any such modification or replacement of a Pole, Tower or Support Structure is to be used for Collocation of a Wireless Facility, Discretionary Review is required under **[cite to Discretionary zoning, land use or similar Code provisions in Code/Charter]** if the Collocation does not involve an Eligible Facilities Request or involves a Small Wireless Facility that exceeds the maximum height set forth in Subsection 2.3c below;
 - (iii) Construction of a new Pole or Tower to be used for Collocation of a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3c below; and
 - (iv) Construction of a Communications Facility, other than those set forth in subsections (i), (ii) or (iii) in this Section 2.2(a), involving the installation of coaxial, fiber optic or other cabling, that is installed underground (direct buried or in conduit) or aboveground between two or more Poles or a Pole and a Tower and/or Support Structure, and related equipment and appurtenances.
- b. Permit Required. No Person shall place any facility described in Section 2.2(a) above in the Public Right of Way without first filing an Application for same and obtaining a Permit therefor, except as otherwise expressly provided in this Chapter.
- c. Proprietary or Confidential Information in Application. The Authority shall make accepted Applications publicly available. Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly. The Authority shall treat the information as proprietary and confidential, subject to applicable State and local “freedom of information” or “sunshine” laws and the Authority’s determination that the Applicant’s request for confidential or proprietary treatment of an Application material is reasonable.

- d. Administrative Review Application Requirements. The Application shall be made by the applicable Wireless Provider or Communications Service 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 Applicant with respect to the filing of the Application.
 - (iii) A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
 - (iv) Detailed construction drawings regarding the proposed facility.
 - (v) To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a [duly licensed engineer] evidencing that the Pole, Tower or Support Structure will structurally support the Collocation in accordance with Applicable Codes.
 - (vi) For any aboveground facilities, visual depictions or representations if not included in the construction drawings [**CONSIDER ADDING, and for new aboveground facilities before and after photo simulations**].
 - (vii) [Other?].
 - (viii) The proposed facility shall comply with any applicable Law.
- e. Ordinary Maintenance and Replacement. An Application shall not be required for Ordinary Maintenance and Replacement, other than to the extent required for permits described in Section 2.4(b)(iii) below.
- f. Information Updates. Any material change to information contained in an Application shall be submitted in writing to the [City] within thirty (30) days after the change necessitating the amendment.
- g. Application Fees. Unless otherwise provided by law, all Applications pursuant to this Chapter shall be accompanied by the Fees required under Section 2.1(a) above.

Section 2.3 Action on Administrative Review Applications

- a. Review of Applications for Administrative Review.
- (i) The [City] shall review the Application in light of its conformity with applicable provisions of this Chapter, and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements:

- (A) Within ten (10) days of receiving an Application, the [City] must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the [City] must specifically identify the missing information, and may toll the approval interval in Subsection 2.3b below. The Applicant may resubmit the completed application within 30 days without additional charge, and the subsequent review will be limited to the specifically identified missing information subsequently completed, except to the extent material changes to the proposed facility have been made by the Applicant (other than those requested or required by the Authority) in which case a new Application and Application Fee for same must be submitted; and **[COMMENT: CONSIDER PRE-SUBMITTAL AVAILABILITY CHECK FOR AUTHORITY POLE ATTACHMENTS; CONSIDER 3 ITERATION REVIEW PROCESS WITH 30, THEN 20, THEN 10 DAYS FOR AUTHORITY REVIEW.]**
- (B) The [City] must make its final decision to approve or deny the Application within [__ (___)] days; and **[COMMENT: SHOULD THIS BE EXTENDED BEYOND CURRENT FEDERAL SHOT CLOCK APPLICABILITY??]**
- (C) The [City] must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the Applicant on or before the day the [City] denies the Application. The Applicant may cure the deficiencies identified by the [City] and resubmit the Application within 30 days of the denial without paying an additional Application fee. The [City] shall approve or deny the revised Application within 30 days of receipt of the revised Application. The subsequent review by the [City] shall be limited to the deficiencies cited in the original denial **[CONSIDER ADDING APPEAL FEE WHERE DENIAL DUE TO NON-COMPLIANCE WITH DESIGN GUIDELINES, STANDARDS AND PROCESSES].**
- (ii) If the [City] fails to act on an Application within the __ (___) day review period referenced in Subsection 2.3(a)(i)(B), the Applicant may provide the [City] written notice that the time period for acting has lapsed, and the Application is then deemed approved by passage of time and operation of law **[NOTE COMMENTS RE DEEMED APPROVED TOO HARSH].**
- (iii) An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the Authority's batch application requirements and process under Section 2.6 below, file a consolidated Application and receive a single Permit for multiple Communications Facilities, or multiple Permits. The [City]'s denial of any site or sites within a consolidated Application shall not affect other sites submitted in the same Application. The [City] shall grant a Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Section.

- b. Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the [City] shall approve and may not deny Applications for Eligible Facilities Requests within sixty (60) days according to the procedures established under 47 C.F.R. 1.40001(c).
- c. Small Wireless Facilities: Maximum Height; Other Requirements. **[FURTHER CONSIDER BOLDED TEXT BELOW]**
 - (i) Maximum Size of Permitted Use. Small Wireless Facilities, and new, modified or replacement Poles, Towers and Support Structures (subject to the further limitation for replacement of Support Structures described in Subsection 1.2aa) to be used for Collocation of Small Wireless Facilities may be placed in the Public Right of Way as a permitted use in accordance with this Subsection 2.2, subject to the following requirements:
 - (A) Each such new, modified or replacement Pole, Tower or Support Structure installed in the Public ROW shall not exceed **[the greater of]**:
 - 1. **[Ten (10) feet above the tallest existing Pole, Tower or Support Structure in the Public ROW, in place as of the effective date of this Chapter, and located within 500 feet of the new proposed Pole, Support Structure or Tower; or],**
 - 2. ____ (__) feet above ground level.
 - (B) New Small Wireless Facilities in the Public ROW shall not exceed**[the greater of]**:
 - 1. **[More than ten (10) feet above an existing Pole, Tower or Support Structure in the Public ROW in place as of the effective date of this Chapter; or]**
 - 2. Above the height limit under Section 2.3c(i)(A)(1).
 - (ii) Discretionary Review Requirements. Any Wireless Provider that seeks to construct, replace or modify a Pole, Support Structure, Tower or a Wireless Facility that exceeds the height or size limits contained in this Subsection 2.3, shall be subject to the [Discretionary Review - e.g., zoning/land use - requirements set forth elsewhere in the City Code/Charter] applicable to construction and placement of such facilities.
 - (iii) Undergrounding Provisions. Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric, telecommunications and cable providers from installing vertical or pole structures in the Public ROW without prior Discretionary Review and approval in areas zoned for **[single family residential use, provided such requirements shall not prohibit the replacement of existing structures FURTHER CONSIDER BOLDED TEXT]**. Horizontal cable

runs shall be placed underground in all areas where electric, telecommunications, and cable lines are underground, unless otherwise approved by the [City engineer] in connection with temporary installations.

d. Effect of Permit.

- (i) Authority Granted; No Property Right or Other Interest Created. A Permit from the [City] authorizes an Applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the Public ROW.
- (ii) Duration. No Permit for construction issued under this Chapter shall be valid for a period longer than twelve (12) months unless construction has actually begun within [___] months of issuance of the Permit, and is thereafter diligently pursued to completion.

e. Removal, Relocation or Modification of Small Wireless Facility in the ROW.

- (i) Notice. Within ninety (90) days following written notice from the [City], a Wireless Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Small Wireless Facility within the Public ROW whenever the [City] has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any [City] improvement in or upon, or the operations of the [City] in or upon, the Public ROW.
- (ii) Emergency Removal or Relocation of Facilities. The [City] retains the right and privilege to cut power to or move any Small Wireless Facility located within the Public ROW of the [City], as the [City] may determine to be necessary, appropriate or useful in response to any public welfare emergency or safety emergency. If circumstances permit, the [City] shall notify the Wireless Provider and provide the Wireless Provider an opportunity to move its own facilities prior to cutting power to or removing a Small Wireless Facility and in all cases shall notify the Wireless Provider after cutting power to or removing a Small Wireless Facility as promptly as reasonably possible.
- (iii) Abandonment of Facilities. Prior to abandonment of a Small Wireless Facility within the Public ROW; and in emergent circumstances, the Wireless Provider shall notify the [City] within thirty (30) days following abandonment. Following receipt of such notice, the [City] may direct the Wireless Provider to remove all or any portion of the Small Wireless Facility if the [City] determines that such removal will be in the best interest of the public safety and public welfare. If the Wireless Provider fails to remove the abandoned facility within sixty (60) days, the [City] may undertake to do so and recover the reasonable expenses of doing so from the Wireless Provider or its fiduciaries.

- f. Public ROW Rates.
- (i) Annual Rate. A Wireless Provider authorized to place Small Wireless Facilities in the Public ROW shall pay to the [City] compensation for non-exclusive use of the Public ROW in the amount of [\$__] annually per Small Wireless Facility. **[COMMENT: CONFORM/RATIONALIZE WITH RATES/FEES SECTION ABOVE.]** A Communications Service Provider, other than a Wireless Provider authorized to place Small Wireless Facilities in the Public ROW, shall pay to the [City] [one-time, upfront] compensation for non-exclusive use of the Public ROW in the amount of [\$__].
 - (ii) Cease Payment. A Wireless Provider authorized to place Small Wireless Facilities in the Public Right of Way is authorized to remove its facilities at any time from the Public ROW and cease paying the [City] compensation for use of the Public ROW.
- g. Attachment to Authority Poles in the Public ROW.
- (i) Annual Rate. The rate to place a Small Wireless Facility on an Authority Pole in the Public ROW shall be [\$__] per year. Such compensation, together with the Application fee and the rights-of-way fee specified in this Chapter, shall be the sole compensation that the Wireless Provider shall be required to pay the [City]. Make-ready charges are addressed in Subsection 2.3g(iii) below. **[COMMENT: SEE COMMENT IMMEDIATELY ABOVE.]**
 - (ii) Cease Payment. A Wireless Provider is authorized to remove its facilities at any time from an Authority Pole in the Public ROW and cease paying the annual rate to the [City].
 - (iii) Make-Ready. For Authority Poles in the Public ROW, the [City] shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the proposed facility, including pole replacement if necessary, within 60 days after receipt of a completed Application requesting attachment to the Authority Pole. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the Wireless Provider. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the [City].

Section 2.4 Other Public ROW Installation Requirements.

- a. General Principles.
- (i) The Authority shall have the power to establish reasonable limitations on the placement of new or additional facilities within specific congested segments of the Public ROW if there is insufficient space to accommodate all of the requests of applicants or person to occupy and use the right of way. Public ROW occupants. In making such decisions, the Authority shall strive to the extent possible to accommodate all

existing users and potential users (i.e. those who have submitted an Application to deploy facilities within the Public ROW) of the Public ROW, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility or other service, the width and physical condition of the Public ROW, the time of year with respect to essential utilities, the protection of existing facilities in the Public ROW and future plans for public improvements and development projects which have been determined to be in the public's interest. **[CONSIDER FURTHER WHETHER TO INCLUDE OR MODIFY THIS SECTION]**

- (ii) Leasing of excess space in ducts, conduits and on a Pole is a matter between interested parties (subject to any applicable Pole Attachment regulations and any other applicable statutory, regulatory or contractual obligations); however, lessees of such physical facilities must still comply with the terms of this Chapter, unless otherwise expressly exempted by the Authority.
- (iii) An occupant of the Public ROW shall employ due care during the installation and maintenance process, and comply with all safety and ROW-protection requirements of applicable Federal, State and local Law (and any generally applicable Authority guidelines, standards and practices), and any additional commonly accepted safety and ROW-protection standards, methods and devices (to the extent not inconsistent with applicable Law). All facilities under the streets of the Authority shall be kept and maintained in a safe and well-ordered condition, and in good order and repair.
 - (A) Any permittee occupying any portion of the Public ROW shall erect a barrier around the perimeter of any excavation and provide any and all traffic-control devices, signs and lights appropriate to the level of complexity of the activity in order to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic-control plan in accordance with the Uniform Manual of Traffic Control Devices.
 - (B) Occupants of the Public ROW with open excavations awaiting final restoration shall maintain all devices until the Authority notifies the occupant in writing that the Authority or the Authority's designated contractor is assuming responsibility for traffic control.
 - (C) Each occupant shall designate a safety officer. The safety officer shall be responsible for safety-related issues affecting both the public and the occupant's field employees and contractors for all job sites within the Public ROW.
- (iv) Location of Existing Facilities.
 - (A) An occupant of the Public ROW shall not place any fixtures or equipment where the same will interfere with any existing facility, and shall locate its lines and equipment in such a manner as not

to interfere unnecessarily with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.

(B) To minimize disruption of public passage or Infrastructure, to forestall or relieve exhaustion of the Public ROW, or to protect environmentally sensitive areas, the Authority may require, as a condition of issuing any Permit for placement of underground facilities that the occupant place empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the Authority's use. The occupant shall cooperate with the Authority in any such construction, provided that the Authority has first notified the occupant in writing that it is interested in sharing the trenches or bores in the area where the construction is occurring. The occupant shall allow the Authority to place its infrastructure in the occupant's trenches and bores as requested by the Authority, provided that the Authority incurs a proportionate share of the costs of trenching, boring, and placing the conduit/infrastructure. The Authority shall be responsible for maintaining its facilities buried in the trenches and bores or otherwise placed in the Public ROW under this subsection.

(C) Before beginning excavation in any Public ROW, an occupant shall contact the regional notification center for subsurface installations (One-Number Locator Service) to determine possible conflicts.

(D) Drop Agreements.

1. LOCATE – Applicants will use a location service/agency to locate and mark existing utilities in the right of way before excavation.

2. FAST-TRACK – Authority should define those installations that may be fast-tracked due to their minimal impact to the right of way. This may include micro-trenching and other minimally invasive techniques. A process should be developed to move fast-tracked applications through the system quickly.

(v) Relocation of Existing Facilities.

(A) If relocation of facilities is required as a result of any public project, the Authority shall provide at least [____ ()] days' notice [**90 DAYS PROBABLY TOO SHORT**] to any occupant of the Public ROW. Unless otherwise provided by applicable law, the occupant, at no cost to the Authority, shall accomplish the necessary relocation within a reasonable time from the date of the notification, but, in no event, no later than seven working days prior to the date the Authority has notified the occupant that it

intends to commence its work, or immediately in the case of emergencies.

- (B) In the event of an emergency, or where any facility in the Public ROW creates or is contributing to an imminent danger to health, safety, or property, the Authority may protect, support, temporarily disconnect, remove, or relocate any or all parts of such facility without prior notice, and charge the occupant for reasonable costs incurred.

(vi) **Abandonment of Facilities.**

- (A) Any occupant of the Public ROW that intends to permanently discontinue use of any facilities within the Public ROW shall notify the Authority in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than 30 days from the date such notice is submitted. Upon notification, the Authority will identify the following options available to the occupant:

1. Abandon the facilities in place and the occupant shall further convey full title and ownership of such abandoned facilities to the Authority. The occupant is responsible for all obligations of the facilities, or other associated liabilities until the conveyance to the Authority is completed; or
2. The facilities shall be removed and the occupant shall be liable for removing the facilities at its own cost. If an occupant fails to remove facilities that the Authority requires it to remove, the Authority may perform the work and collect the cost from the occupant.

- (B) The Authority shall use reasonable discretion to determine a time period to remove facilities based upon the size of the facilities and scope of deployment throughout the Authority. In no case shall an occupant with facilities deployed [City]-wide be provided less than twelve (12) months to remove its facilities.

b. **General Requirements.**

- (i) All deployments of Communications Facilities in the Public ROW shall comply with the following:
 - (A) Compliance with ADA and other generally applicable Federal, State and local Laws.
 - (B) Pedestrian and vehicular traffic and safety.
- (ii) **Design Standards.** All aboveground Communications Facilities in the Public ROW requiring Administrative Review only shall conform to the

following design guidelines [ESTABLISH, THROUGH PUBLIC PROCESS AS DESIRED OR REQUIRED, DEFINITIVE, OBJECTIVE DESIGN GUIDELINES THAT AN APPLICANT CAN FOLLOW/INCORPORATE FOR COMPLIANCE WITH ADMIN REVIEW ONLY PROCESS]:

- (A) Add shape and other requirements for attachments and ground-based equipment
 - (B) If the proposal involves Collocation on a Decorative Pole, add further requirements for attachment to and/or replacement of same
 - (C) If the proposal involves same attachment to or a new Pole or Tower on or adjacent to a Historic Property, consider further requirements
 - (D) [Other]
- (iii) Additional Permits. In addition to obtaining a Permit for installation of a Communications Facility in the Public ROW, an Applicant must obtain the following additional permits: [street opening permit, electrical permit, _____ - insert other specific local permits].
- (iv) Placement of facilities. Unless agreed to in writing by the Authority in advance, underground facilities shall be placed between the property line and the curb line of all streets and avenues. Underground facilities shall have consistent alignment parallel with the edge of pavement and shall have a minimum two-foot horizontal clearance from other underground utilities and their appurtenances. The Authority engineer shall assign specific corridors within the Public ROW, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, that the Authority engineer expects will someday be located within the right of way. All excavation, obstruction, or other permits issued by the [City] engineer involving the installation or replacement of facilities shall designate the proper corridor for the facilities.
- c. Underground Construction.
- (i) Depth. Unless agreed to in writing in advance by the Authority, the depth of installed facilities shall be, at a minimum, measured from the bottom of the facility to the top of the cable, as follows:
 - (a) If the road style and other conditions permit, microtrenching no more than sixteen (16) inches in soil;¹

¹ Micro-trenching is a low-impact deployment methodology in which fiber and conduit are inserted into a slot-cut trench 2 inches wide and between 16 inches deep – without damaging or disrupting existing

- (b) Twenty-four (24) inches in soil, if conditions do not permit microtrenching;
 - (c) Twenty-four (24) inches below a projected slope from the flowline of a ditch at a three (3) horizontal and one (1) vertical slope;
 - (d) Forty-eight (48) inches under a roadway measured from the surface of said roadway to the top of the installation;
 - (e) Forty-eight (48) inches under a stormwater or creek channel design flowline; and
 - (f) Twenty-four (24) inches under all water and natural gas lines.
- (ii) Excavations shall be promptly backfilled according to Authority standards and the earth shall be restored to original grade to assure no hazard to vehicular or pedestrian traffic. The ROW occupant shall perform all necessary compaction tests in accordance with the latest design and construction specifications approved and disseminated by the Authority setting forth requirements for backfill and paving cut repairs (e.g., standard concrete pavement cut and repair; standard asphalt pavement cut and repair, etc.).
 - (iii) The repair or replacement of any sidewalk, any driving surface and the base of any roadway shall comply with Authority standards, pursuant to engineering plans on file with the Authority and may require additional removal to the nearest joint in all directions. Unless a privately-financed public improvement application is filed, this removal and all pavement restoration shall be the responsibility of the Authority or its assigned contractor at the expense of the ROW occupant.
 - (iv) A ROW occupant shall not proceed with additional trench work exceeding a maximum of five hundred feet (500) feet of open trench without the approval of an Authority inspector.
 - (v) Casement. Underground conduit shall be placed in such a manner so it can be located by the ROW occupant. All conduit should have sequentially marked footage at every foot. The approved methods of locating conduit are by using locatable pull tape, installing a ground wire, using a toneable duct or installing armored cable. All ROW occupants shall make all reasonable efforts to ensure that all existing facilities shall be marked during the normal course of business.
 - (vi) Construction Signage.
 - (a) Any permittee excavating or obstructing any portion of the ROW shall erect a temporary sign displaying either: (1) The names of the ROW occupant, any contractors and/or subcontractors

infrastructure. The cost savings, speed of deployment and reduction in resources, over conventional trenching is compelling.

involved in the project and the Authority Permit number authorizing said activity; or (2) the names of the ROW occupant and a local telephone number or toll free number manned during regular business hours by a person who is knowledgeable about the construction project. The sign shall be visible from any adjacent traffic lane and shall be maintained throughout the duration of the project.

- (b) All vehicles used, parked or stored by or on behalf of a ROW occupant or permittee within a permitted construction zone shall be clearly marked, providing the name of the facility's owner, the permittee, the contractor or subcontractor. Any unmarked vehicles shall be subject to all moving and parking ordinances. Private vehicles shall not be permitted to be parked or stored within any permitted work zone at any time.
- (c) A copy of the current Permit shall be maintained on each work site, and shall be presented upon request to any Authority representative.
- d. Mapping Data. Applicants shall provide to the Authority engineer information indicating the horizontal and approximate vertical location, relative to the boundaries of the Public ROW, of all equipment which it owns or over which it has control and which is located in any Public ROW. Mapping data shall be provided with the specificity and in the format requested by the [City] engineer for inclusion in the mapping system used by the [City] engineer.
- e. Existing Utility Easements in the Public Right of Way.
 - (i) Applicants will work with the [City] engineer to coordinate and protect existing utilities in the Public ROW.
 - (ii) Applicants will coordinate with the [City] engineer all public safety considerations prior to and during installation in the Public ROW to ensure public safety response in the case of gas line, water line or electricity disturbance.

Section 2.5 Attachment to Decorative Poles. Notwithstanding anything to the contrary in this Chapter, an Applicant may install a Small Wireless Facility on a Decorative Pole, only upon satisfaction of the following requirements:

- (i) Issuance of a Permit under Section 2.2(a) above.
- (ii)
- (iii)

Section 2.6 Batch Applications. [To be added]

Article III. Governance of Deployment Outside the Public ROW

Section 3.1 Permitted Communications Facility Uses Administrative Review; Application and Fees.

- a. Permitted Use: **[THIS SECTION AND RELEVANT DEFINITIONS TO BE CONSIDERED FURTHER]** The following uses outside the Public ROW, on privately-owned property including, without limitation, within any Private Easement (except where noted below), shall be a permitted use, subject to Administrative Review only and issuance of a Permit as set forth in this Section 3.1:
- (i) Collocation of a Small Wireless Facility on privately-owned property including, without limitation within a Private Easement, consistent with the height and other limitations set forth in Subsection 2.3c above;
 - (ii) Modification or Replacement of a Pole, Tower or Support Structure for Collocation of a Communications Facility on privately-owned property including, without limitation, within a Private Easement, provided that, to the extent any such modification or replacement of a Pole, Tower or Support Structure is to be used for Collocation of a Wireless Facility, Discretionary Review is required under **[cite to zoning, land use or similar Code provisions in Code/Charter]** if the Collocation does not involve an Eligible Facilities Request or involves a Small Wireless Facility that exceeds the maximum height set forth in Subsection 2.3c above;
 - (iii) Construction of a new Pole or Tower on privately-owned property including, without limitation, within a Private Easement, to be used for Collocation of a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3c above; and
 - (iv) Construction of a Communications Facility, other than those set forth in subsections (i), (ii) or (iii) in this Section 3.1a, involving the installation of coaxial, fiber optic or other cabling, that is installed underground (direct buried or in conduit) or aboveground between two or more Poles or a Pole and a Tower and/or Support Structure, and related equipment and appurtenances.
 - (v) Any other type of Communications Facility authorized under **[cite to existing requirements of the City Code/Charter that allow installation with Administrative Review only]**.
- b. Permit Required. No Person shall place a facility described in Section 3.1(a) above without first filing an Application for same and obtaining a Permit therefor, except as otherwise expressly provided in this Chapter.
- c. Proprietary or Confidential Information in Application. The Authority shall make accepted Applications publicly available. Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or

confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly. The Authority shall treat the information as proprietary and confidential, subject to applicable State and local “freedom of information” or “sunshine” laws and the Authority’s determination that the Applicant’s request for confidential or proprietary treatment of an Application material is reasonable.

- d. Administrative Review Application Requirements. The Application shall be made by the applicable Wireless Provider or Communications Service Provider or its duly authorized representative and shall contain the following:
- (i) The Applicant’s name, address, telephone number, and e-mail address.
 - (ii) A copy, or other written evidence, of an agreement with the underlying property (or structure) owner authorizing the proposed facility to be constructed on the underlying property (or structure) **[CONSIDERING ALTERNATIVE AS FOLLOWS: A certification by the Applicant that the underlying property (or structure) owner has granted authority to install the proposed facility on the property (or structure)]**.
 - (iii) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
 - (iv) A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
 - (v) [Detailed construction drawings regarding the proposed facility].
 - (vi) To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a [duly licensed engineer] evidencing that the Pole, Tower or Support Structure will structurally support the Collocation in accordance with Applicable Codes.
 - (vii) For any Wireless Facility, visual representations and/or before and after photo simulations.
 - (viii) [Other?].
 - (ix) The proposed facility shall comply with any applicable Law.
- e. Ordinary Maintenance and Replacement. An Application shall not be required for Ordinary Maintenance and Replacement, other than to the extent required for applicable permits described in Section 2.4b(iii) above.
- f. Information Updates. Any material change to information contained in an Application shall be submitted in writing to the [City] within thirty (30) days after the change necessitating the amendment.

- g. Application Fees. Unless otherwise provided by law, all Applications for a Facility under Section 3.1 above shall be accompanied by the following Fees - _____.

Section 3.2 Action on Administrative Review Application

a. Review of Applications for Administrative Review.

- (i) The [City] shall review the Application in light of its conformity with applicable provisions of this Chapter, and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements:

(A) Within ten (10) days of receiving an Application, the [City] must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the [City] must specifically identify the missing information, and may toll the approval interval in Subsection 2.3b below. The Applicant may resubmit the completed application within 30 days without additional charge, and the subsequent review will be limited to the specifically identified missing information subsequently completed, except to the extent material changes to the proposed facility have been made by the Applicant (other than those requested or required by the Authority) in which case a new Application and Application Fee for same must be submitted; and **[COMMENT: CONSIDER PRE-SUBMITTAL AVAILABILITY CHECK FOR AUTHORITY POLE ATTACHMENTS; CONSIDER 3 ITERATION REVIEW PROCESS WITH 30, THEN 20, THEN 10 DAYS FOR AUTHORITY REVIEW.]**

(B) The [City] must make its final decision to approve or deny the Application within [__ (__)] days; and **[COMMENT: SHOULD THIS BE EXTENDED BEYOND CURRENT FEDERAL SHOT CLOCK APPLICABILITY??]**

(C) The [City] must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the Applicant on or before the day the [City] denies the Application. The Applicant may cure the deficiencies identified by the [City] and resubmit the Application within 30 days of the denial without paying an additional Application fee. The [City] shall approve or deny the revised Application within 30 days of receipt of the revised Application. The subsequent review by the [City] shall be limited to the deficiencies cited in the original denial **[CONSIDER ADDING APPEAL FEE WHERE DENIAL DUE TO NON-COMPLIANCE WITH DESIGN GUIDELINES, STANDARDS AND PROCESSES].**

- (ii) If the [City] fails to act on an Application within the __ (__) day review period referenced in Subsection 2.3(a)(i)(B), the Applicant may provide

the [City] written notice that the time period for acting has lapsed, and the Application is then deemed approved by passage of time and operation of law **[NOTE COMMENTS RE DEEMED APPROVED TOO HARSH]**.

- (iii) An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the Authority's batch application requirements and process under Section 2.6 above, file a consolidated Application and receive a single Permit for multiple Communications Facilities, or multiple Permits. The [City]'s denial of any site or sites within a consolidated Application shall not affect other sites submitted in the same Application. The [City] shall grant a Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Section.

b. **Effect of Permit.**

- (i) **Authority Granted; No Property Right or Other Interest Created.** A Permit from the [City] authorizes an Applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may own or have other interests in the Private Easement or other privately-owned property.
- (ii) **Duration.** No Permit for construction issued under this Chapter shall be valid for a period longer than twelve (12) months unless construction has actually begun within [___] months of issuance of the Permit, and is thereafter diligently pursued to completion.

Section 3.3 Eligible Facilities Requests.

- a. **Review of Eligible Facilities Requests.** Notwithstanding any other provision of this Chapter, the [City] shall approve and may not deny Applications for Eligible Facilities Requests within sixty (60) days according to the procedures established under 47 C.F.R. 1.40001(c).

Section 3.4 Applications Requiring Discretionary Review and Approval.

- a. **Discretionary Review Required.** The following uses on private property including, without limitation, any Private Easement, shall require compliance with, and issuance of a Permit under **[cite to existing requirements of the City Code/Charter that require Discretionary Review]**:
 - (i) Collocation of Wireless Facilities that do not qualify as Eligible Facilities Requests; provided, however, if the proposed Wireless Facility would qualify as an Eligible Facilities Request but for the placement of ground equipment outside the current site or compound, but the proposed Wireless Facility meets the underlying setbacks for the type of equipment being installed on the ground and any landscaping or fencing requirements applicable generally in that location, the Application shall be subject to Administrative Review only **[CONSIDER FURTHER WHETHER PROVIDED, HOWEVER CLAUSE SHOULD REMAIN]**.

- (ii) All other uses not expressly set forth or referenced in Section 3.1(a) above.

b. Design Standards.

- (i) Height, size, color.
- (ii) Structure design/style (new/replace use cases).
- (iii) Structure classification for existing Towers shall be evaluated under the latest version of ANSI/TIA-222.
- (iv) Excluded poles and mitigation approach (including Authority requirement to provide "facilitate alternative location recommendation")
- (v) Default aesthetic approach per facility
- (vi) Default construction approach per facility including powering and metering
- (vii) Default structural integrity/remediation approach per facility
- (viii) Default electrical integrity/remediation approach per facility
- (ix) Default set-backs
 - (A) Setbacks for ground-mounted equipment.
 - 1. Ground-mounted equipment for Wireless Facilities, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Wireless Facility or Tower. Any equipment not used in direct support of such operation shall not be stored on the site.
 - 2. Ground-mounted equipment for Wireless Facilities must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Authority.
- (x) Lighting and Marking
 - (A) Towers shall not be lighted or marked unless required by, and compatible with requirements of, the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
 - In all districts, appropriate security lighting meeting generally applicable standards for security lighting for the district shall be permitted.

- (xi) Permit to install process definitions and service level agreements
- (xii) Fencing/landscaping/signage.
 - (A) Fencing.
 - 1. Towers shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the Authority.
 - 2. The Authority may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.
 - 3. For locations where decorative fencing is otherwise required, the Authority may allow chain link fence if decorative fence poses a risk for security or vandalism.
 - 4. For Towers located within a floodplain where the ground equipment will be elevated on platforms, the Authority may waive any decorative fencing requirement in favor of chain link.
 - (B) Landscaping. In all districts, the Authority shall have the authority to impose reasonable landscaping requirements surrounding the any ground-mounted equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The Authority may choose to not require landscaping for sites that are not visible from the Public ROW or adjacent property or in instances where in the judgment of the Authority, landscaping is not appropriate or necessary.
 - (C) Signage. Signs located shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
 - (D) Other Decision factors.
 - 1. Collocation analysis.
 - 2. Alternative site analysis.
- c. Ordinary Maintenance and Replacement. An Application shall not be required for Ordinary Maintenance and Replacement, other than to the extent required for permits described in Section 2.4(b)(iii) above.

Section 3.5 Temporary and Emergency Installations.

- a. Deployables may be operated for a period of not more than [one hundred and twenty (120)] days, when operated in connection with a special event after

issuance by the Authority of a Permit based upon an Administrative Review only. Deployables operated in conjunction with a special event shall meet reasonable setbacks determined by the [City engineer], shall be subject to receipt of a valid building permit, if applicable, shall meet uniform fire code requirements, and shall be removed within seventy-two (72) hours of completion of the event.

- b. Deployables may be operated in any zoning district [COMMENT: DEPLOYABLES ARE DEPLOYED WHERE THEY ARE NEEDED. PROHIBITION OF DEPLOYMENT IN PARTICULAR ZONES IS TO DOOM THOSE AREAS TO UNRESTORED OUTAGES FOR THE DURATION.] after a declaration of an emergency or a disaster by an authority executive.

Article IV. OTHER

Section 4.1 “DIG ONCE” REQUIREMENTS

a. Requirements for New Developments [TO BE CONSIDERED FURTHER]

- (i) For all new developments, the Planning Department [or equivalent] shall ensure that the Applicant/project developer has publicly offered to coordinate with Communications Service Providers either thru the Municipal Planning/Utilities/Transportation Department or equivalent non-discriminatory process to ensure the ROW and any planned utility easements are adequate to accommodate the deployment of horizontal and vertical assets. In addition to horizontal and vertical assets, utility planned easements should allow for an adequate number of huts, utility poles and towers to adequately serve current and projected needs. These easements should be sized and located to accommodate current and future communication technologies and a variety of communication service providers. Access to easements shall be provided to Communication Service Providers on a non-discriminatory basis and at a reasonable cost, or pursuant to applicable law. **[NOTE: THE COST AD-HOC RATES & FEES GROUP SHOULD CONSIDER RECOMMENDATIONS FOR THIS COST ALSO]**
- (ii) In instances where the Applicant/project developer chooses to install conduit for communications purposes, it shall be provided on a non-discriminatory basis at a cost that is a reasonable proportion of the actual installation cost. **[NOTE: THE COST AD-HOC RATES & FEES GROUP SHOULD CONSIDER RECOMMENDATIONS FOR THIS COST ALSO]** Access to easements and trenches should be made available to Communications Service Providers as early in the development cycle as possible to minimize installation costs and disruption to residents, businesses, institutions and governments, and their property. The Applicant/project developer should be encouraged to promote coordination among Communications Service Providers and other utilities so that each can benefit from the other’s construction activities to allow timely and efficient access to such things as open trenches.

b. Online Database of Public Construction [TO BE CONSIDERED FURTHER]

- (i) To the greatest extent possible, the Planning/Utilities/Transportation Department (or equivalent) and all public utilities under the control of the Municipality should maintain a public “planned construction” database accessible to all communication service providers preferably via the Internet or other equivalent means. The database should list and describe future planned construction activities that will affect the Right of Way. Communications Service Providers will consult the database to avoid areas of planned construction to coordinate their construction and, where possible, minimize the cost of relocating facilities, as well as become aware of joint construction opportunities that could benefit the municipality, the Communications Service Provider, and others. If the municipality does not have a database available to Communications Service Providers, the Planning/Utilities/Transportation Department (or equivalent) should notify franchises, licensees or otherwise authorized Communications Service Providers of planned construction activities when they are authorized or funded.
- (ii) When constructing roads or public utilities, the municipality should make open trenches available to Communications Service Providers on a non-discriminatory basis and at a reasonable cost, or pursuant to applicable law. **[NOTE: THE COST AD-HOC RATES & FEES GROUP SHOULD CONSIDER RECOMMENDATIONS FOR THIS COST ALSO]**

NOTE: SOMETHING SIMILAR TO THE ABOVE VERBIAGE SHOULD ALSO BE INCLUDED IN THE STATE MODEL CODE.

Section 4.2 Exceptions to Applicability of this Chapter

- a. Notwithstanding anything to the contrary in this Chapter, the following facilities are not subject to the provisions of this Chapter: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; and (3) television and AM/FM radio broadcast towers and associated facilities.

Section 4.3 Effective Date

This Chapter shall take effect ten (10) days after its passage, approval and publication.

APPENDIX A

Drafters' Explanation

The FCC Broadband Deployment Advisory Committee, Model Code for Municipalities Working Group (“Working Group”) was charged with developing a model code for local governments across the country to act as a non-binding, flexible guideline to help to speed broadband deployment across the United States. There are over 39,000 local governments (including townships, counties, and other municipalities) in the United States, with enormous diversity based on geography, size, resources, aesthetics, existing infrastructure, regulatory and legal framework, history, culture, and community priorities.

Pursuant to the FCC’s charge, and given the importance of broadband deployment to America’s economic competitiveness as well as creating educational and employment opportunities for our population, the Working Group developed the following set of guiding principles to focus its work:

1. Contribute to the swift and safe deployment and expansion of broadband throughout the United States.
2. Ensure the benefits of broadband networks and infrastructure reach all communities.
3. Promote competition, access, and diversity in the deployment of both wired and wireless broadband infrastructure and the provision of broadband services.
4. Develop guidelines for the use of public assets to ensure the best overall outcome for all current and potential residential and commercial broadband users.
5. Develop guidelines for predictable, network-level planning and implementation, which also helps to minimize adverse impacts to municipalities and local communities and maximizes benefits.
6. Promote transferring of knowledge to local governments to help enable and accelerate broadband deployment.
7. Recognize the need to allocate resources to digital inclusion and innovative business models to drive broadband adoption and close digital divides.
8. Promote innovation, economic and job growth, and improved quality of life through broadband access and usage.
9. Promote fair labor and safety standards for workers and the public.
10. Balance the use of public rights-of-ways to support and enhance robust and competitive broadband services in a manner that is consistent and balanced recognizing the differences among technologies.

In this spirit, the following Model Code represents the inputs from cross-sector Working Group members to inform the codes of local governments across the country.

NOTE: When considering adoption of this Model Code, local governments should consider that there may be federal, state or local laws that could limit or otherwise affect various terms and provisions set forth herein. Circumstances of each local government may require modifications of this Model Code and legal review is strongly advised prior to adoption.

**APPENDIX B
Right of Way Utility Application
For Wireline Only Installations
(coax, fiber or other cabling, and related equipment)**

Applicant Information

Applicant Name		Company Name	
Applicant Email		Company Address	
On-Site Contact Name		On-Site Contact Phone #	
On-Site Contact Email			

Project Information

Location(s): _____

Project Description: _____

Portion(s) of the right of way affected by project. (Select all that apply)

Street _____ Sidewalk _____ Shoulder _____

Work Types:

Telecommunications: _____ Linear Feet: _____ Underground _____ Aerial _____
Service _____

Other Infrastructure Impacts (Power/Gas/Sewer):

Right of Way Obstruction Request. (Select all that apply)

Sidewalk Obstruction/Detour: _____ Date(m/d/yy) From: _____ To: _____
Lane Obstruction: _____ Date(m/d/yy) From: _____ To: _____
Full Street Closure: _____ Date(m/d/yy) From: _____ To: _____

THIS DRAFT MODEL CODE IS SUBJECT TO FURTHER REVISIONS BY THE WORKING GROUP

Checklist:

Applicant agrees to comply with all applicable Local, State, and Federal Regulations.

Applicant agrees to all street, lane and sidewalk closures and detours will be in Compliance with the ADA and MUTCD requirements.

A copy of the permit must be on-site of construction.

All fees must be paid prior to the start of construction.

Applicant/Permittee Signature

Date

Utility Permit Requirements

- A. **Location Plan:** An applicant shall file a completed location plan as an attachment to this Utility Application. The location plan shall set forth the location of the proposed line on the road system or along lot lines and include a description of the proposed installation. Drawings shall include the following information:
1. Street name or number. The centerline should be indicated.
 2. Visible orientation (North Arrow) and identifying landmarks.
 3. Identify Right of way (ROW) line with horizontal distance from street centerline shown.
 4. Provide One Call design request information. (Minimally, the list of utilities)
 5. List all the existing utilities in the installation area. Describe how your installation will address existing utilities that are in conflict, and show all observable existing features, such as power poles, pedestals, markers, handholes, tress, etc.
 6. Show all construction features/ bore pits with the running line and horizontal distance from roadway edge or centerline.
 7. Show the start/stop and depths or elevations for all bores, longitudinal and transverse.
 8. Show the start/stop and depths or elevations for all plowing or aerial locations.
 9. Show casing start/stop locations, lengths, diameter, and material if casings are used.
 10. Show all facilities that are to be install on the plan. This includes pedestals, wire, conduit, poles, guy anchors, junction boxes, handholes and manholes. All facilities should show distance from roadway edge or centerline.
 11. Show where installation starts and stops, leaves ROW, stops at existing pedestal, pole, etc. Indicate distance from roadway edge or centerline.
 12. Identify any physical focal points, posts, pedestals, shutoffs, overflow vales, hydrants, etc.
 13. Describe any other work to accomplish installation before during and/or after installation, including: removal of brush/trees, removal of underbuild, construction of access, fence removal, fence replacement, etc.
 14. A copy of applicable traffic control standards.
- B. **Notice of Work:** Applicant shall file at least _____ complete working days prior to the proposed installation a complete Right of Way Utility Installation Application, associated drawings and attachments, and required fee. Additionally, at least _____ complete working days prior to the actual work, the applicant shall notify the [city] of the intent to begin work.

- C. **Application Approval:** The [city] shall review a complete application, associated plans and drawings in a timely manner, but under no circumstance longer than _____ days.
- D. **Inspection:** The [City] shall provide an inspector during the installation of all lines to review compliance with the Utility Permit. The inspector shall have the right, during reasonable hours and after showing proper identification, to enter any installation site in the discharge of the inspector's official duties, and to make any inspection or test that is reasonably necessary to protect the public health, safety and welfare. The applicant shall pay the actual costs for inspection of the project.
- E. **Issuance:** Upon approval of the application, the Utility Permit will be issued by the [city]. The permit fee will be \$_____ (*Typically \$50 to \$200*)
- F. **Remittance of Fees:** The applicant shall pay the actual costs of fees directly attributable to the installation inspection conducted by the [city]. Payment shall be made within thirty (30) days after completion of the installation. Payments not made in such time shall be subject to reasonable interest charges.
- G. **Requirements:** The applicant shall comply to the following requirements:
1. Construction signing shall comply with the Manual on Uniform Traffic Control Devices.
 2. A permanent warning tape shall be placed one (1) foot above all underground utility lines.
 3. Residents along the utility route shall have uninterrupted access to the public roads. An all-weather access shall be maintained for residents adjacent to the project.
 4. A joint assessment of the road surfacing shall be made by the applicant and the [city] both before and after construction. After construction, granular surfacing shall be added to an existing granular roadway, drive or parking area by the applicant to restore the surfacing to its original condition. After surfacing has been applied, the road surface shall be reviewed by the [city] once the road has been saturated, to determine if additional surfacing on the roadway by the applicant is necessary.
 5. All damaged areas within the ROW shall be repaired and restored to at least its former condition by the applicant or the cost of any repair work caused to be performed by the [city] will be assessed against the applicant. Portland cement concrete patches shall be 1" thicker than the removed portland cement concrete surfacing. Asphaltic cement concrete patches shall be 1" thicker than the removed asphaltic cement concrete surfacing.
 6. Areas disturbed during construction which present an erosion problem shall be solved by the applicant in a manner approved by the [city].
 7. All trenches, excavations, and utilities that are knifed shall be properly tamped.

8. Cable, pipe line, and electrical line crossing paved roads shall be constructed as follows: Utilities designated by the [city] which cross under the roadway shall be placed in casings so that the pipe may be removed for repair without disturbing the subgrade. The casing shall be adequate strength, and of sufficient length to extend two (2) feet beyond each edge of the surfaced roadway. On paved roads, cable casings may be placed through the sub-grade by jacking, or by boring a hole just large enough to take the line. All open excavations near pavement shall be of sufficient distance from pavement to prevent soil collapses resulting in undermining of pavement.
 9. On roads not paved, an open trench may, upon approval of the [city], be dug and the cable, pipeline, or electric line placed therein, and the trench backfilled over the line. All backfilling of tunnels and trenches shall be thoroughly compacted in layers of 6" or less in depth. Backfilling of trenches within the ROW shall be tamped sufficiently to avoid settlement. All work shall be one in a workmanlike manner, and the ground left in a neat condition, satisfactory to the [city] in charge.
 10. To restore all excavations not in road surfaces but in [city] right of way with sod or seed as directed by the [city] to a condition that is equal to or better than existing prior to the construction of the project.
 11. All overhead utilities shall be placed at a distance of two (2) feet inside the ROW line unless specifically approved otherwise by the [city].
 12. Location and protection of all underground utilities is the applicant/contractor responsibility. The applicant/contractor will be required to coordinate work with the utility companies. Utility locations are coordinated by calling _____ (One Call). Existing utilities and services lines that coincide with proposed underground main locations are to be located in advance by the applicant/contractor such that proposed underground utilities can be adjusted to eliminate conflicts.
- H. **Non-Conforming Work:** The [city] may halt the installation at any time if the applicant's work does not meet the requirements set forth in this Utility Permit.
- I. **Emergency Work:** In emergency situations, work may be initiated by an applicant without first obtaining a Utility Permit. However, a Utility Permit must be obtained within fourteen (14) days initiation of the work. All emergency work shall be done in conformity with the provisions of this Utility permit and shall be inspected for full compliance.
- J. **Violation of Ordinance:** Violation of any of the provisions of this Utility Permit shall be a simple misdemeanor punishable with a civil penalty of \$_____ for each violation. Each day that a violation occurs or is permitted to exist by the applicant constitutes a separate offense.
- K. **Hold Harmless:** The utility company shall save this [city] harmless of any damages resulting from the applicant's negligence or willful misconduct. A copy of a certificate of insurance naming this [city] as an additional insured for the permit work shall be filed with the [city]. office prior to installation. The minimum limits of liability under the insurance policy shall be \$_____.

- L. **Surety or Cash Bond:** The contractor or applicant shall have on file with the [city] a surety bond or cash bond for restoration of areas within the ROW and on utility easements. This bond shall be a minimum of \$_____ and may be of greater value depending on the scope of the project. A cash bond shall be held for 90 days after date of completion.

- M. **Permit Required:** No applicant shall install any lines unless such applicant has obtained a Utility Permit from [city] and has agreed in writing that said installation will comply with all ordinances and requirements of the [city] for such work. Applicants agree to hold the [city] free from liability for all damage to applicant's property which occurs proximately as a result of the applicant's failure to comply with said ordinances or requirements.

- N. **Relocation:** The applicant shall, at any time subsequent to installation of utility lines, at the applicant's own expense, relocate or remove such lines as may become necessary to conform to new grades, alignment or widening of ROW resulting from maintenance or construction operations for highway improvements.