

Chapter 71

ABOVE GROUND, FIBER, AND TELECOMMUNICATIONS

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ARTICLE I. UTILITY POLES IN THE RIGHT OF WAY

Sec. 71-10. Scope, Authority to Regulate, and Utility Poles in City Right of Way

The City of Lewiston's street rights-of-way are a critical City asset serving many purposes including, vehicular traffic, bicycle traffic, pedestrian traffic, hosting utilities and providing an aesthetic to the City. It is in the City's interest to manage these rights-of-way to balance these uses in a manner that best serves its citizens, their safety, wellbeing and prosperity. The purpose of this Article is to manage above ground utility poles in a manner that achieves this balance and meets State and Federal law for utility accommodation and Americans with Disabilities Act (ADA) requirements. (Ord. No. 20-02, 02-20-20)

Sec. 71-11. Definitions.

"*Make-ready work*" means the rearrangement or transfer of existing facilities, replacement of a pole, complete removal of any pole replaced, or any other changes required to make space available for an additional attachment to a shared-use pole. (Ord. No. 20-02, 02-20-20)

Sec. 71-12. Permitting New Poles.

Permitting new poles shall be done through the City Clerk in accordance with MRSA 35-A, Chapter 12, Section 250. Applications must include:

- Name and address of the applicant,
- Purpose and use of the new installation,
- Co-located utilities anticipated,
- Location sketch of the new installation with field-measured distances to key features such as curbs, catch basins, underground utilities, trees, buildings and sidewalk features, where applicable,
- Minimum height of wires and other fixtures,
- Proposed guy wires or anchors including their proposed location.
- Acknowledgment that the proposed location has been marked in the field for review,
- Proposed date of installation, and
- Other site-specific pertinent and reasonable information requested by the Public Works Director.

The application shall include payment for a review fee established by policy adopted by the City Council and listed in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties.

The City Clerk will coordinate a review of such applications with the Director of Public Works and other Departments, as appropriate, and will issue a written permit or denial within 30 days of receiving a complete application.

(Ord. No. 20-02, 02-20-20)

Sec. 71-13. Sidewalks and ADA.

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Poles associated with public utilities may only be placed within a sidewalk if such placement maintains a minimum 60 inches of unobstructed sidewalk width and is not inconsistent with the Federal American with Disabilities Act design features.

An applicant for a pole permit may seek a waiver from this requirement upon a showing to the satisfaction of the Public Works Director that there exists no practicable alternative that would allow for maintaining utility services to adjacent properties. Upon such a showing, the Director may reduce the minimum width of unobstructed sidewalk to no less than 54 inches at locations where no other structures or obstructions are present that would otherwise limit the ability to plow city sidewalks and no less than 48 inches where other existing obstructions exist that prohibit sidewalk plowing. Any guy wires or other appurtenances associated with utility poles and extending over any sidewalk must provide for a minimum 9 feet of clearance above the sidewalk.

A violation of this section shall be subject to a minimum fine as established by policy adopted by the City Council and listed in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties. Additionally the Utility will be required to relocate any object violating these standards and repair any damage done to the sidewalk or maintained lawn as a result of such work.

(Ord. No. 20-02, 02-20-20)

Sec. 71-14. Replacement Poles and Unsafe Conditions.

Replacement poles do not require a new permit under most circumstances. However, to maintain the right-of way for all allowed uses, including the free flow of pedestrian and vehicular traffic, the replacement pole must not infringe on other uses of the right of way. Replacement poles must meet the requirements in section 71-13 Sidewalks and ADA. If a replacement pole is proposed that will further infringe on the standards above, then a New Pole Permit will be required per section 71-12. Permitting New Poles. In no case shall a new or replacement pole restrict access to less than ADA design standards.

Replaced poles must be removed from the right of way and sidewalk and lawn repairs made within 180 days of placement of the replacement pole. All coordination with collocated utilities is the responsibility of the pole Owner.

If the Public Works Director identifies a potentially unsafe condition related to a pole installation, guy wire or anchor, the pole Owner will be notified in writing. The pole Owner shall respond to the Public Works Director within 30 days of such notice with their plans to mitigate the potential safety condition. After an acceptable plan is approved by the Public Works Director, the work must be completed within thirty days unless the Public Works Director grants and extension related to winter conditions. Prior to correction, the Owner is required to take the necessary steps to provide such temporary measures as are necessary to ensure public safety. A violation of this section shall be subject to a minimum fine as established by policy adopted by the City Council and listed in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties.

(Ord. No. 20-02, 02-20-20)

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Sec. 71-15. Municipal Space on Existing or New Poles.

In accordance with An Act to Establish Municipal Access to Utility Poles Located in the Municipal Rights-of-Way, MRSA Title 35-A, Chapter 25, section 2524 and other applicable State law, space shall be made available on each pole, below the electric power company's wires and above the telephone and or cable television company's lines or cables. This space shall be reserved on all poles planted within the City Right of Way. This space shall be available to the City for municipal purposes, free of charge including no make ready fees.

In order to safeguard access to infrastructure essential to public health, safety and welfare, an Owner of a shared-use pole and each entity attaching to that pole is responsible for that Owner's or entity's own expenses for make-ready work to accommodate the City attaching its facilities to that shared-use pole.

(Ord. No. 20-02, 02-20-20)

Sec 71-16. Permit Revocations -- Highway and Sidewalk Projects.

The City of Lewiston will notify Utilities owning poles, guy wires and anchors within the City's right-of-way of the need to relocate their facilities due to a highway or sidewalk construction project, in writing no less than 180 days prior to commencement of construction. City Engineers will work with the Utility as the project is designed. It is the pole Owner's responsibility to coordinate with all co-located utilities. All costs for the pole, guy wire or anchor relocation shall be the responsibility of the pole Owner and collocated utilities.

If the poles are not moved within the 180 days or a date agreed to in writing between the Owner and Director of Public Works, the City Clerk may revoke the pole permits for the subject poles and may assess the pole Owner a daily fine established by policy adopted by the City Council and listed in in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties.

(Ord. No. 20-02, 02-20-20)

Secs. 71-17-19. Reserved.

ARTICLE II. SMALL CELL WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE

Sec. 71-20. Authority and Purpose.

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A., Section 3001 (Home Rule), the provisions of the Planning and Land Use Regulation Act, Title 30- A M.R.S.A., Section 4312 et seq. Also Specific to Small Wireless Facilities Title 30- A M.R.S.A., Section 4362 An Act to Facilitate Deployment of Small Cell Wireless Facilities in Maine and Public Utilities, Regulation of Facilities in the Public Way Title 35-A, Chapter 25.

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The purpose of this Article is to provide a process and a set of standards for the construction and placement of small cell wireless telecommunications facilities along municipal rights of way and on other properties within the municipality's jurisdiction in order to:

- Implement a municipal policy concerning siting of small cell wireless telecommunications facilities;
- Establish clear guidelines, standards and periods for the exercise of municipal authority to regulate small cell wireless telecommunications facilities;
- Allow competition in small cell wireless telecommunications service while minimizing redundant facilities;
- Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Lewiston;
- Ensure protection of the public health, safety and welfare;
- Encourage the co-location of small cell wireless telecommunications facilities;
- Further the goals and policies of the comprehensive plan while promoting orderly development of the city with minimal impacts on existing uses;
- Protect the scenic and visual character of the community;
- Ensure aesthetic requirements are reasonable, no more burdensome than those applied to other telecommunication infrastructure deployments, and are made publicly available in advance; and
- Comply with the 2012 Spectrum Act and the Telecommunications Act of 1996 as each is amended.

In the event that applicable federal or state laws or regulations conflict with the requirements of this ordinance, the wireless provider shall comply with the requirements of this ordinance to the maximum extent possible without violating federal or state laws or regulations.

(Ord. No. 20-02, 02-20-20)

Sec. 71-21. Definitions.

The terms used in this ordinance shall have the following meanings:

Alternative Tower Structure means clock towers, bell steeples, joint use utility poles, light poles, water towers, electrical transmission line towers, smokestacks, existing buildings, and similar mounting structures that may support, or camouflage or conceal the presence of an Antenna(s).

Antenna/Antenna Array means a system of one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals. These include, but are not limited to, omnidirectional antennas (whips or rods), directional antennas (panels) and parabolic antennas (dish or disc).

Antenna Height means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

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Co-location means the use of a wireless telecommunications facility by more than one wireless telecommunications provider or the use of a utility facility, such as a pole, by multiple public utilities including wireless telecommunications providers.

Decorative Pole means a municipal pole that is specially designed and placed for aesthetic purposes.

Designated Scenic Resource means that specific location, view, or corridor, as identified as a scenic resource in the municipality's Comprehensive Plan or by a State or federal agency, that consists of:

1. a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
2. lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

Expansion means the addition of antennas, towers, or other devices to an existing structure or replacing existing installations with larger ones.

FAA means the Federal Aviation Administration, or its lawful successor.

FCC means the Federal Communications Commission, or its lawful successor.

Height means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

Historic or Archaeological Resources means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;

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4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Secretary of the Interior through the Maine Historic Preservation Commission; or
5. Areas identified by a governmental agency, such as the Maine Historic Preservation Commission, as having significant value as a historic or archaeological resource and any areas identified in the municipality's Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

Historic District means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's Comprehensive Plan or designated by the municipal legislative body for revitalization or preservation. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

Historic Landmark means any improvement, building or structure of particular historic or architectural significance to the municipality relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the municipality's Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

Line of Sight means the direct view of the object from the designated scenic resource.

Parabolic Antenna (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

Principal Use means the use other than one which is wholly incidental or accessory to another use on the same premises.

Public Recreational Facility means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's Comprehensive Plan, designed to serve the recreational needs of municipal property owners.

Small Cell Wireless Telecommunications Facility means a subset of Wireless Telecommunications Facilities that includes antenna, radio, power source and meter, disconnect switch, fiber optic cable, and supporting equipment, where each antenna of which could fit within an enclosure of no more than 3 cubic feet and of which all associated wireless equipment, other than concealment elements, has a cumulative volume of no more than 28 cubic feet. (Also referred to throughout this ordinance as "small cell facility").

Small Cell Facility - Co-located means a Small Cell Wireless Telecommunications Facility that is installed on an Alternative Tower Structure instead of a new support structure.

Targeted Market Coverage Area means the area that is targeted to be served by the proposed telecommunications facility.

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Unreasonable Adverse Impact means that the proposed project would produce an end result which is excessively out-of-character with the designated scenic resources affected, including existing buildings, structures, and features within the designated scenic resource and which would significantly diminish the scenic value of the designated scenic resource.

Viewpoint means that location which is identified either in the municipality's Comprehensive Plan or by a federal or State agency and which serves as the basis for the location and determination of a particular designated scenic resource.

Wireless Telecommunications Facility means a facility that transmits, receives, distributes, provides or offers telecommunications services, radio or television signals, or any other spectrum-based transmissions/receptions, together with the facility's associated antennas, microwave dishes, horns, cables, wires, conduits, ducts, lightning rods, electronics and other types of equipment for the transmission, receipt, distribution or offering of such signals; wireless communication towers, antenna support structures, and other structures supporting said equipment and any attachments to those structures including guy wires and anchors, equipment buildings, generators, parking areas, utility services, driveways and roads and other accessory features.

Wireless Telecommunications Facility—Co-located means a Wireless Telecommunications Facility that is installed on an Alternative Tower Structure instead of a new tower structure.

(Ord. No. 20-02, 02-20-20)

Sec. 71-22. Applicability and Exemptions.

This ordinance applies to all construction and expansion of small cell wireless telecommunications facilities, as defined herein, unless specifically exempted. It includes any existing small cell wireless telecommunication facilities in existence at the time this ordinance goes into effect.

The following are exempt from the provisions of this ordinance:

- A. *Emergency Wireless Telecommunications Facility.* Wireless communication facilities for emergency communications by public officials or any municipal or quasi-municipal organization currently serving the municipality of Lewiston.
- B. *Amateur (ham) radio stations.* Amateur (ham) radio stations licensed by the FCC.
- C. *Maintenance or repair.* Maintenance or repair of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- D. *Temporary wireless telecommunications facility.* Temporary wireless telecommunications facilities, in operation for a maximum period of one hundred eighty (180) days.

(Ord. No. 20-02, 02-20-20)

Sec. 71-23. Review and Approval Authority.

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No person shall install, construct, or expand any small cell wireless telecommunications facility within the City of Lewiston without obtaining approval in the form of a written permit from the City Clerk in the form of a location permit for:

1. Any expansion or modification of an existing wireless telecommunications facility that increases the height or width of the facility;
2. Accessory use of an existing wireless telecommunications facility;
3. Co-location of a wireless telecommunications facility on an existing wireless telecommunications facility or alternative tower structure; or
4. Installation of new or modification of existing small cell wireless telecommunications facilities.

The City Clerk shall review applications for small cell wireless telecommunications facilities and make written findings on whether the proposed facility complies with this ordinance. The City Clerk is authorized to call upon other city staff to assist in making this determination.

No small cell facility shall be constructed or expanded without a location permit issued by the City Clerk. Within 180 days of this ordinance becoming effective, the owners of all existing small cell telecommunications facilities within the city of Lewiston must apply for an after-the-fact permit(s). The Application fees shall be waived for existing facilities.

Notwithstanding any provision in any municipal ordinance to the contrary, small cell facilities and co-located small cell facilities shall be a permitted use in all zoning districts.

Nothing in this ordinance authorizes a person to locate or co-locate small wireless facilities on property owned by a private party, including but not limited to wireless support structures and joint use utility poles, or property owned or controlled by the federal government, state government, or subdivision thereof, or the municipality, without the consent of the property owner.

(Ord. No. 20-02, 02-20-20)

Sec. 71-24. Application.

All persons seeking permitting under this ordinance shall submit an application as provided below. The City Clerk shall be responsible for ensuring that notice of the application is provided to the Directors of Public Works and Planning and Code Enforcement.

Applications for permit approval by the City Clerk must include the following materials and information:

- A. Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including name and address of the property/facility owner and the applicant.
- B. A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

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- C. The location where each proposed small cell facility or utility pole would be installed, including photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small cell facility would be mounted or the location where utility poles or structures would be installed, including a depiction of the completed facility, a location map and elevation drawings of the proposed facility and any other proposed structures showing color and identifying structural materials.
- D. Identifying information including: (a) name, address, telephone number, and email address of the applicant and, where co-location is sought, of the owner(s) of the utility pole if different than the applicant; (b) utility pole, building or facility number or other identifying marking; and (c) address of nearest property;
- E. In instances where a stand-alone facility is proposed, the applicant must provide evidence demonstrating that no existing facility owned by the applicant or by others with whom the applicant, or others utilizing similar installations to those of the applicant, has previously co-located facilities can be utilized to provide the service proposed by the applicant, the evidence for which may consist of any one or more of the following:
1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements; or
 2. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements; or
 3. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment; or
 4. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on existing facilities, buildings, or structures in the vicinity of the proposed location and has been denied access or met with unreasonable terms for co-location; or
 5. Technical evidence that co-location on an existing facility would impede the functional operation of the applicant's proposed small cell facility or an existing wireless telecommunication facility to an extent that would significantly impair the function of the existing or proposed facility.
- F. For proposed new small cell facility support structures including, but not limited to, new utility poles, a signed statement that commits the owner of the facility and his or her successors in interest to:

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1. Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
2. Negotiate in good faith for shared use by third parties;
3. Allow shared use if an applicant agrees in writing to pay reasonable charges for co-location;
4. Require no more than a reasonable charge for shared use based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the installation or equipment to accommodate a shared user without causing electromagnetic interference.

G. A form of surety acceptable to the municipality to guarantee payment for the costs of removing the facility if it is abandoned.

A written commitment to notify the municipality within thirty (30) days of cessation of use of any approved facilities and to remove such facilities within ninety (90) days of termination of use.

(Ord. No. 20-02, 02-20-20)

Sec. 71-25. Fees.

All fees outlined below shall be set by the City Council in a schedule located in the City's Master Policy 81, Miscellaneous Fees and Penalties.

Application Fee. An application submitted to the City Clerk for approval shall include payment of an application fee. This fee includes typical costs for city staff review of a complete application and issuance of a permit. The application shall not be considered complete until this fee is paid.

Attachment Fee. An application for attachment to municipal facilities shall include payment of any applicable fees for new and/or renewed attachments. This fee includes typical cost for city staff review of a complete application, review by a professional engineer and issuance of a permit.

After-the-Fact Application Penalty. Where a small cell telecommunications facility has been installed without the required municipal permit, the applicant will be subject to a penalty in addition to meeting the application requirements and paying the required fees.

Permit applications for small cell telecommunication facilities in place when this ordinance became effective will not be charged an Application Fee or After-the-Fact Application Penalty unless an owner of such a facilities does not submit the appropriate applications within 180 days

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of the effective date of this ordinance. In such case, both Application Fee and the After-the-Fact Allocation Penalty shall apply.

(Ord. No. 20-02, 02-20-20)

Sec. 71-26. Notice of Incomplete Application.

Within ten (10) working days of receipt of an application, the City Clerk shall review the application and determine if the application meets the submission requirements. If the application is incomplete, the City Clerk shall notify the applicant in writing, specifying the additional materials, information, or action required to complete the application.

(Ord. No. 20-02, 02-20-20)

Sec. 71-27. Objection and Comment.

The opportunity to file objection and comment on applications for placement of wireless facilities in the municipal right of way shall be afforded pursuant to Title 35-A, section 2503.

(Ord. No. 20-02, 02-20-20)

Sec. 71-28. Approval.

Within thirty (30) days of receiving a complete application for approval, the City Clerk shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The City Clerk shall approve the application if the City Clerk finds the following:

- A. The small cell facility does not interfere with the safety and convenience of travel over the public right of way or other existing uses of the public right of way and shall not interfere with municipal emergency service communication equipment;
- B. The small cell facility is matched to the greatest extent practicable to the preexisting condition of the utility pole or nearby utility poles, including color and scale;
- C. No part of the small cell facility projects from the utility pole further than four (4) feet six (6) inches from its existing height and width and all such projections shall be a minimum of seven (7) feet above ground level, including utility meters. Where the applicant can show that no feasible alternative exists, installations below 7 feet must be separately approved in advance by the Director of Public Works or designee and be sited in such a manner as to not impede the normal and regular use of the public right of way by pedestrians, vehicles, or regular maintenance activities.
- D. The permittee agrees to comply with all local ordinances and state and federal laws;
- E. The permittee is able to satisfy the requirements detailed in section 71-30.

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The time period for approval may be extended upon agreement between the applicant and the City Clerk.

(Ord. No. 20-02, 02-20-20)

Sec. 71-29. Permit Duration.

Location permits issued pursuant to this ordinance shall expire if construction of the proposed facility is not commenced within 12 months of the permit date or if construction is suspended for more than six months. The City Clerk is not required, but may agree, to extend the period within which construction must commence. (Ord. No. 20-02, 02-20-20)

Sec. 71-30. Standards of Review.

All small cell wireless telecommunications facilities, regardless of location, are required to comply with applicable municipal policies and ordinances. Applications for the placement of small cell facilities must comply with the standards in this section in order to obtain approval from the City Clerk.

- A. *Location on Municipal Property.* Proposals to locate new small cell wireless telecommunications facilities on municipal property, or to expand or replace existing small cell facilities on municipal property other than the municipal right of way, must:
 - 1. Provide satisfactory evidence of non-interference with the current or intended use of the property where the facility or expansion is to be sited;
 - 2. Provide adequate liability insurance coverage in amounts and types required by the municipality;
 - 3. Include an agreement with the municipality, including any provisions deemed by the municipality to be necessary to ensure the protection of the public interest, as well as reasonable and lawful terms of compensation for the use of the municipal property.
- B. *Attachment.* For facilities proposed as an expansion, accessory use, or co-location to a structure legally existing at the time the application is submitted, the attachment may not cause the existing structure to become non-conforming, nor may the attachment increase the non-conformance of a structure that is otherwise legally non-conforming, including compliance with the Americans with Disabilities Act.
- C. *Permission.* The applicant has sufficient right, title, or interest to locate the proposed facility on the new or existing structure.
- D. *Height.* The proposed facility increases the height of existing structures by no more than four (4) feet six (6) inches.
- E. *Conformance.* The proposed facility shall be constructed with materials and muted colors that match or blend with the surrounding natural or built environment, and

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existing non-invasive plants and natural land forms on the site shall be preserved to the maximum extent reasonably practicable. Additionally, small cell facility owners and operators shall comply with:

1. Any existing requirements that have been imposed by a contract between the municipality and a private property owner that concerns design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way;
 2. Spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way;
- F. *Preservation.* The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact on districts, sites, buildings, structures, or objects significant in American history, architecture, archaeology, engineering or culture, that are:
1. Listed, or are eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800); or
 2. Included within a nationally or locally designated historic district or district of special sensitivity, such as areas where the city requires utilities to be located underground or where they are excluded from placing poles or above ground installations. Installations in such areas must first provide proof that no reasonable and economically feasible alternatives exist; or
 3. In an area programmed by the City through its Comprehensive Plan, or designated by its legislative body, for revitalization that includes, but is not limited to, current or future streetscape improvements.

Small cell facility installations in the areas described above shall comply with written design standards that are generally applicable to installations such as decorative utility poles, or conform to reasonable stealth, concealment and aesthetic requirements established by or deemed acceptable to the municipality to the extent that such requirements or similar requirements apply to other occupiers of the rights-of-way, including but not limited to those adjacent to an historic landmark or in a historic district. Installations within a historic district or adjacent to a historic structure must apply for and receive a separate certificate of appropriateness from the City's Historic Preservation Commission.

Where overhead utilities lines have been put underground such that there are decorative street light poles and no other utility poles, small cell facilities must be incorporated into Options A or B:

- Option A. The interior or base of the existing decorative pole without change to the outward appearance of the pole; or
- Option B. New streetlight poles of substantially similar design that can accommodate the small cell facilities.

Under option B, unless the applicant and Director of Public Works are able to agree to mutually agreeable terms of ownership, maintenance, and replacement, the

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applicant shall be responsible for the cost of installing, maintaining, and operating the requisite new streetlight poles.

Under either option A or B, the volume of the base of the small cell facility is limited to 25 cubic feet.

- G. *Lighting.* A new small cell facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.
- H. *Structural Integrity.* Owners of new small cell facilities are responsible for ensuring ongoing compliance of their facilities with all applicable structural engineering standards adopted, enforced, or recognized by the State of Maine.
- I. *Visual Impact.* The proposed small cell facility will have no unreasonable adverse impact upon designated scenic resources within the municipality, as identified either in the municipality's Comprehensive Plan or by a State or federal agency.
- J. *Frequency Emissions Compliance.* The applicant shall certify compliance with all applicable FCC radio frequency emissions regulations as a requirement of its permit application.

(Ord. No. 20-02, 02-20-20)

Sec. 71-31. Conditions of Approval.

- A. *Standard Conditions.* The following standard conditions of approval shall be a part of any approval or conditional approval issued by the City Clerk. Reference to the conditions of approval shall be clearly noted on the final approved plan and shall include agreement by the owner of the small cell wireless telecommunications facility, and successors and assignees, to comply with the conditions set forth in this section.
- B. *Interference with Municipal Services Prohibited.* New small cell wireless telecommunications facilities shall not interfere with municipal services including, but not limited to, emergency communications networks, municipal wireless internet, traffic signals, and other municipal smart infrastructure systems.
- C. *New Location Order.* New small cell wireless telecommunications facilities must be located according to the following order. The City Clerk may permit applications at a subsequent local level only once the applicant has demonstrated, to the Directors of Public Works and Planning and Code or their designee's satisfaction, the existence of a basis on which the prior location order level(s) is not obtainable due to one or more of the conditions cited in section 71-24 E of this ordinance.

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1. Co-location on existing wireless telecommunications facility support structures including but not limited to towers;
2. Co-location on an existing joint use pole or other joint use structures;
3. Location on other existing structures including, but not limited to, buildings, provided such installation preserves the character and integrity of those structures;
4. Location on municipal buildings or facilities, or location on a new pole to be installed by the applicant, depending on the municipality's preference.

This section may be waived or modified by the City Clerk upon approval of the Directors of Public Works and Planning and Code.

- D. *Maintenance and Repair.* The owner of a small cell facility permitted pursuant to this ordinance, or the owner's designee, shall maintain and repair, at its sole cost and expense, the owner's facilities and shall repair, at its sole cost and expense, any damage caused by the facility or work related to the facility to municipal streets, sidewalks, curbs, gutters, trees, parkways, poles, utility lines and systems, sewer or water systems or lines, or other municipal property, when the damage is caused by the small cell facility, or the small cell facility owner's ancillary facilities, or employees or contractors performing work on behalf of the small cell facility owner or owner's designee. The wireless provider shall restore damaged property to substantially the same condition in which it existed prior to the damage.
- E. *Decorative Poles.* The Director of Public Works or designee may require applicants wishing to place their facilities on decorative poles to replace the decorative pole when necessary to co-locate a small cell facility, and any replacement pole must reasonably conform to the design aesthetics of the decorative pole being replaced. The Director of Public Works or designee may impose non-discriminatory design criteria on decorative poles prior to the installation of the replacement pole.
- F. *Relocation and Removal.* Upon the written direction of the municipality, the owner of a small cell facility permitted pursuant to this ordinance, or the owner's designee, at its sole cost and expense, shall relocate or remove the small cell facility and any related equipment that is interfering with or is likely to interfere with emergency or routine municipal maintenance activities or with other work planned to be undertaken by the city within the right-of-way or city owned property.
- G. *Additional Conditions.* Where necessary to ensure that an approved project meets the criteria of this ordinance, the City Clerk may impose additional reasonable conditions of approval.
- H. *Amendment.* Any changes or modifications to approved applications must be approved by the City Clerk in accordance with section 71-23.

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Sec. 71-32. Abandonment.

Any small cell wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned.

- A. Notice. Owners of small cell facilities shall provide written notice to the City Clerk if it sells or transfers ownership of its small cell facilities within the jurisdiction of the municipality. Such notice shall include the name and contact information of the new facility owner. Transfers of ownership shall be subject to a fee to be established by the City Council

The City Clerk may notify the owner of abandoned facilities in writing and order the removal of the facility within ninety (90) days of the date of mailing of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the City Clerk that the facility has not been abandoned.

- B. Removal. If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition.
- C. Surety. If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the City Clerk to release the surety when the abandoned facility and related equipment are removed to the satisfaction of the Director of Public Works or designee.
- D. Unclaimed Property. In the event city is unable to identify the owner of an abandoned small cell wireless telecommunications facility or is unable to establish reliable communication with an owner who has been identified, the municipality may remove the facility thirty (30) days after posting notice of the municipality's intent to remove the facility on the municipality's website and including the intent to remove on the city council meeting agenda.

(Ord. No. 20-02, 02-20-20)

Sec. 71-33. Administration and Enforcement.

The City Clerk or designee shall enforce this ordinance. If the City Clerk or designee finds that any provision of this ordinance has been violated, the Clerk shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The City Clerk shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance including, but not limited to, the violation provisions of section 71-34. (Ord. No. 20-02, 02-20-20)

Sec. 71-34. Violation.

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The City Clerk may terminate an existing permit based on failure to comply with this ordinance. The City Clerk must document the basis for the termination, including the specific provisions of this ordinance on which the termination is based, and send the documentation to the small cell facility owner of record with the municipality on or before the day the City Clerk issues the termination. The owner may cure the deficiencies identified by the City Clerk within 30 days of the day the Clerk issues the termination notice and may request reinstatement of the permit subject to the terms existing prior to the termination. The City Clerk shall respond to the request for reinstatement within 10 working days of receiving the request. If the request is denied by the City Clerk, the permit holder may appeal the decision in accordance with the provisions of section 71-35.

The municipal officers, or their authorized agent, may enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless the removal of the violation will result in a threat to public health or safety or substantial environmental damage.

(Ord. No. 20-02, 02-20-20)

Sec. 71-35. Appeals.

Any person aggrieved by a decision of the City Clerk under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reason for appeal. (Ord. No. 20-02, 02-20-20)

Sec. 71-36. Penalties.

Any person who owns or controls any property that violates this Chapter 71 shall be fined in accordance with Title 30-A M.R.S.A., section 4452. Each day such violation continues after notification by the City Clerk shall constitute a separate offense. (Ord. No. 20-02, 02-20-20)

Sec. 71-37. State and Federal Jurisdiction.

It is the responsibility of applicants to separately obtain all requisite approvals necessary from the state and federal governments for location of facilities on property, including but not limited to rights of way, within state or federal jurisdiction. The municipality shall not be liable for facilities located in state or federal jurisdiction. (Ord. No. 20-02, 02-20-20)

Sec. 71-38. Conflict and Severability.

A. *Conflicts with other Ordinances.* Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

B. *Severability.* The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

(Ord. No. 20-02, 02-20-20)