



NO. 2020-22

AN ORDINANCE AMENDING TITLE 12 OF THE SANDY MUNICIPAL CODE BY CREATING A NEW CHAPTER 12.20 ADDRESSING SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY.

WHEREAS, the City of Sandy (“City”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are needed to deliver wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes that the wireless industry needs small wireless facilities, including facilities commonly referred to as small cells, deployed in the public rights-of-way; and

WHEREAS, the City further recognizes that the City must balance the benefits from small cell infrastructure with its aesthetic impact on the community in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City’s historic and environmental resources to the extent feasible; and

WHEREAS, the City intends to adopt a new code consistent with local, state and federal laws, standards and requirements;

NOW, THEREFORE, THE CITY OF SANDY ORDAINS AS FOLLOWS:

1. Title 12 of the Sandy Municipal Code is hereby amended to include a new Chapter 12.20 as provided in Exhibit “A” attached hereto and incorporated herein by this reference.
2. This Ordinance shall become effective on the 30th day after its adoption.

This ordinance is adopted by the Common Council of the City of Sandy and approved by the Mayor this 03 day of August 2020



Stan Pulliam, Mayor

ATTEST:



Jeff Aprati, City Recorder

Exhibit A

12.20 SMALL WIRELESS FACILITIES

12.20.010 – Purpose and Scope

- (A) Purpose. The purpose of this Chapter is to establish reasonable and nondiscriminatory policies and procedures for the placement of small wireless facilities in the right-of-way within the City’s jurisdiction, consistent with and to the extent permitted by federal and state law, in order to provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City rights-of-way and the City as a whole.
- (B) Intent. In enacting this Chapter, the City is establishing uniform standards consistent with federal law to address the placement of small wireless facilities and associated poles in the rights-of-way, including without limitation, to manage the public right of way in order to:
- (1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - (2) prevent the creation of obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (3) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
 - (4) protect against environmental damage, including damage to trees;
 - (5) preserve the character of the community, Historic Districts or areas with Decorative Poles; and
 - (6) facilitate technology advancements, such as deployment of small wireless facilities, to provide the benefits of wireless services.

12.20.020 - Definitions

(A) “Antenna” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines the term to mean an apparatus designed for the purpose of emitting radiofrequency (RF) emission, to be operated or operating from a fixed location pursuant to Federal Communication Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

~~(A)~~(B) “Antennanecessary eEquipment” means the sameantenna equipment as defined in 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with

an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.¹

- (B) ~~“Antenna” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines the term to mean an apparatus designed for the purpose of emitting radiofrequency (RF) emission, to be operated or operating from a fixed location pursuant to Federal Communication Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.~~
- (C) “Antenna facility” means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated accessory equipment.²
- (D) “Applicable codes” means, ~~without limitation,~~ uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.
- (E) “Applicant” means any person ~~who duly authorized to submit~~ an application as or on behalf of a wireless provider.
- (F) “Application” ~~or “applications”~~ means a request(s) submitted by an applicant: i) for permission to collocate small wireless facilities; or ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required on an existing, modified, new or replacement structure.
- (G) “City structure” means a structure located in the rights-of-way within the City’s boundary that is owned, managed or operated by the City or any subdivision or instrumentality thereof, including, municipal electric utilities. Includes, but is not limited to streetlights, traffic signals, utility poles buildings and other structures.

¹The FCC uses the term “antenna equipment” to mean the non-antenna accessory equipment associated with a small cell. The City finds this term confusing because using “antenna equipment” to describe equipment that is not antenna appears contrary to term on its face. In fact, the FCC’s full definition of “antenna equipment” refers to 47 C.F.R. § 1.320(d), which includes a definition for “antenna” that is essentially a combination of “antenna” and “antenna equipment” as defined in 47 C.F.R. § 1.6002. The reference to § 1.320(d) has been omitted from the definition and the City uses “accessory equipment” in this Chapter 12.20 to avoid confusion.

²As written, the definition uses the term “accessory equipment” in lieu of “antenna equipment” for the reasons stated in the previous footnote.

- (H) “Collocate” or “collocation” means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. “Collocation” has a corresponding meaning.
- (I) “Day” means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.
- (J) “Decorative pole” means a city structure that is specially designed and placed for aesthetic purposes.
- (K) “Historic district” means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, (2) a locally designated historic district existing when an application is submitted.
- (L) “Permissions” means those authorizations needed for deployment of Small Wireless Facilities.
- (M) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (N) “Pole” means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities consistent with applicable codes; provided, such term does not include a tower, building or electric transmission structures.
- (O) “Right-of-way” means the same as provided in Chapter 12.02.050.
- (P) “Routine maintenance” means inspections, testing, repair, and modifications subject to Section 6409(a) that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure. Any work on a small wireless facility that would not require a permit (e.g., a traffic control permit, building permit, encroachment permit, etc.) qualifies as routine maintenance. As an illustration and not a limitation, routine maintenance would include, without limitation, one for one antenna or accessory equipment replacements but would not include technology upgrades that alter or add to the RF emissions from the antenna facility. Similarly, routine maintenance would include, without limitation, the installation of minor brackets or braces to harden an antenna facility but would not include the replacement or reinstallation of the underlying support structure.

- (Q) “Small wireless facility” means a facility that meets each of the following conditions per the 47 C.F.R § 1.6002(l), as may be amended or superseded:
- (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
 - (2) Each antenna associated with the deployment, excluding associated accessory equipment, is no more than three cubic feet in volume; and
 - (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
 - (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).
- (P) “Structure” means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as “a pole, tower, or base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).”
- (Q) ~~“Technically feasible” means that the proposed placement, location or design for a small wireless facility can be implemented without a material reduction in the intended service objective of the small wireless facility.~~ “Wireless Infrastructure Provider” means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communications transmission equipment, wireless facilities, but that is not a wireless services provider.
- (R) ~~(R) —“Wireless Provider” means either (1) any person who provides “personal wireless services”, as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded; or (2) any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but does not provide personal wireless services.~~

~~(R)~~(S) “Wireless Services Provider” means a person who provides personal wireless services (whether or not it is commingled with other services).

12.20.030 – Permitted Use; Authorizations~~Applications~~ and Fees

(A) Permitted Use. The following uses within the rights-of-way shall be a permitted use, subject to compliance with the city’s applicable design standards, administrative review only and issuance of a permit as set forth in this Chapter:

(1) Collocation of a small wireless facility; and

(2) Placement of a new, modified or replacement pole to be used for collocation of a small wireless facility.

~~(A)~~(B) Authorizations~~Application~~ Required. Except as otherwise provided in this Chapter, no person shall place any small wireless facility in the right-of-way without first filing an application for the facility and obtaining all permits necessary for the installation.

~~(B)~~(C) Application Requirements.

An application filed pursuant to this Chapter shall be made by the wireless provider or its duly authorized representative on forms provided by the City and, at a minimum, shall contain the following:

- (1) The applicant’s name, address, telephone number, and e-mail address;
- (2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
- (3) A general description of the proposed small wireless facility and associated pole, if applicable. 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 physical work proposed;
- (4) Site plans and engineering drawings to scale that identify the proposed small wireless facility;
- (5) A statement or other demonstration that the small wireless facility shall comply and maintain compliance with all applicable codes, regulations and standards, including a certification in a form acceptable to the City that the small wireless facility will comply with applicable FCC regulations for human exposure to RF emissions.

(6) The application requirements applicant shall not be ~~required to provide~~ more burdensome information to obtain a small wireless facility permit than for similarly situated small wireless facilities is required of other entities who install small wireless facilities in the rights-of-way.

(D) Routine Maintenance and Replacement. An application shall not be required for: (1) routine maintenance; or (2) the replacement of a small wireless facility that is the same or smaller in size and weight and height. The City may require one or more permits for work within the right-of-way. It shall be the applicant's responsibility to ascertain with the City which additional permits are required, given the proposed work, and obtain all such permits before commencing work. ~~Routine maintenance in connection with an existing small wireless facility shall be permitted, subject only to any traffic control, encroachment or other regulatory authorizations as may be required for the specific scope of work.~~ Notwithstanding anything to the contrary in this chapter, the applicant and/or wireless provider ~~permittee~~ conducting routine maintenance shall not be relieved of its obligations to comply with all generally applicable health and safety regulations.

(E) Information Updates. Any amendment to non-material information contained in an application shall be submitted in writing to the City within thirty (30) days of the change.

~~(D)~~(F) Application Fees. Application fees in accordance with applicable state and federal law shall be set by resolution of the City Council.

12.20.040 – Decisions; Notice of Decision

(A) Findings for Denial. The City must process all applications on a nondiscriminatory basis and may deny an application subject to this Chapter if the proposed small wireless facility:

- (1) Materially and demonstrably interferes with the safe operation of traffic control equipment;
- (2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;
- (3) Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;
- (4) Fails to comply with applicable codes, standards and regulations, including the City's design standards; or
- (5) Fails to comply with the provisions in this Chapter.

- (B) Time for Final Action; Notice of Final Action. The City ~~must~~shall act on an application within the applicable shot clock and advise the applicant in writing ~~if~~if its application is denied~~final action~~. If the final action is to deny the application,³ ~~the~~the written notice shall state the reasons for denial, with reference to specific code provisions, ordinance, application instructions or otherwise publicly-stated procedures on which the denial was based, and ~~be sent~~the notice to the applicant within five (5) days after the City denies the application or before the applicable shot clock expires, whichever occurs first.
- (C) Batched Applications. Applicants may submit ~~batched~~batched applications as provided under applicable law, and the City shall act on such applications as provided in 12.20.040 (B) and consistent with applicable law. A ~~batched~~batched application that includes only collocations on existing structures shall be subject to a 60-day timeline. A ~~batched~~batched application that includes only new support structures shall be subject to a 90-day timeline. A ~~batched~~batched application that includes both collocations and new support structures shall be subject to a 90-day timeline

12.20.050 – Special Design Requirements

- (A) Decorative Poles. Subject to the City’s discretion, a wireless provider may be permitted to collocate on or replace a decorative pole when necessary to collocate a small wireless facility; provided that any such replacement pole shall, to the extent feasible, replicate the design of the pole being replaced.
- (B) Underground Accessory Equipment Districts. ~~The City has worked to underground all overhead utilities in the following areas over several years:~~

[INSERT AREA DESCRIPTIONS]

This work has included placing all possible utilities in the right-of-way underground in these areas. Therefore, the City seeks to avoid new above ground utilities on these areas to the maximum extent practicable. If these locations are critical for small wireless facilities, City staff shall first work with applicants to find locations adjacent to identify appropriate locations for the installation of wireless facilities. If alternate locations are not technically feasible, the City shall allow Small Wireless Facilities in these areas, subject to the other requirements of this Chapter.

Wiring and cable connections between the antennas and ground equipment shall be internal to the support structure or shrouded so it is not visible. Shrouding and all visible hardware shall match the color of the support structure. All accessory equipment in these areas shall be located underground in a vault. Wiring and cable connections between the base of the support structure and the vault shall be underground. Vaults shall be located and constructed so as not to impede other uses of the right-of-way such as use by pedestrians, bicycles, and vehicles. Where an applicant establishes that underground

³ ~~Note that a “final action” for the purposes of federal regulations is not the same as a “final decision” for the purposes of Oregon state law.~~

vaulting is not technically feasible, ground mounted equipment boxes shall be allowed subject to the other requirements of this Chapter.

~~[NOTE: ACCORDING TO THE FCC ORDER, UNDERGROUNDING REQUIREMENTS ARE SUBJECT TO THE SAME CRITERIA AS OTHER AESTHETIC STANDARDS. AESTHETIC REQUIREMENTS (INCLUDING UNDERGROUNDING) MUST BE (1) REASONABLE; (2) NO MORE BURDENSOME THAN REQUIREMENTS IMPOSED ON OTHER INFRASTRUCTURE DEPLOYMENTS; (3) OBJECTIVE; AND (4) PUBLISHED IN ADVANCE.~~

~~IN THIS REGARD, A REQUIREMENT THAT ALL ELEMENTS OF ALL WIRELESS FACILITIES BE DEPLOYED UNDERGROUND WOULD AMOUNT TO AN EFFECTIVE PROHIBITION GIVEN THE PROPAGATION CHARACTERISTICS OF WIRELESS SIGNALS EMITTED FROM ANTENNAS. CITIES ARE ENCOURAGED TO REVIEW CURRENT UNDERGROUNDING REQUIREMENTS AND WORK WITH THEIR ATTORNEYS/ROW SPECIALISTS TO MAKE SURE THOSE REQUIREMENTS ARE NOT IN CONFLICT WITH THE FCC ORDER.]~~

~~(B)~~(C) Historic District. Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a substantially similar appearance, including coloring and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation.

12.20.060 – Effect of Construction/Work Permit

(A) Authority Granted. 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 rights-of-way.

(B) Permit Duration.

(1) The ~~build-out period for a~~ permit for construction granted pursuant to this Section shall be valid for a period of **[one year]** after issuance unless extended for an equal amount of time by the City for good cause.

~~(2) The permit authorizing the use shall be coterminous with the applicable right-of-way license, franchise or other agreement granting the applicant access to the rights-of-way.~~

~~(3)~~(2) The installed facility is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, and an applicant's right to terminate a permit at any time.

12.20.070 – Removal, Relocation or Modification of Small Wireless Facility in the ROW

- (A) Notice. The City shall provide the ~~applicant~~permittee reasonable advance written notice, but no less than 30 days 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 rights-of-way (collectively, “City work”). Within the time specified in the written notice from the City, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way in order to accommodate the City work. ~~The City shall specify a reasonable time for such removal, relocation, change or alteration in its notice, taking into account the nature and scope of the work involved and the urgency of the City’s need for such work to be performed. Within the time specified in the written notice from the City, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights of way in order to accommodate the City work.~~
- (B) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City in the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. If practicable under the circumstances, the City shall notify the wireless provider~~permittee~~ and provide the wireless provider~~permittee~~ an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the ~~permittee~~wireless provider promptly when practicable after cutting or removing a small wireless facility.
- (C) Abandonment of Facilities. Within 90 days after a small wireless facility is abandoned, the ~~permittee~~wireless provider shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable codes. In the event that the ~~permittee~~wireless provider does not complete the obligations under this condition, or cause them to be completed, within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the ~~permittee~~wireless provider shall be liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (D) Damage and Repair. The City may require a wireless provider~~permittee~~ to repair all damage to the rights-of-way directly caused by the activities of the wireless provider~~permittee~~ or third parties acting under the wireless provider~~permittee~~’s direction and restore the rights-of-way to its the condition that existed before the damage occurred. All such repair work shall be performed in accordance with applicable laws and to the

City Public Works Director's satisfaction. If the wireless provider~~permittee~~ fails to make the repairs within [30] days after written notice, the City shall have the right (but not the obligation) to affect those repairs, and the wireless provider ~~permittee~~ shall be liable for all costs and expenses incurred by the City in connection with such repairs.

12.20.080 – Collocation on City Structures in the ROW

- (A) Collocation on City Structures. Small wireless facilities may be collocated on city structures in the rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement or an arrangement which excludes otherwise qualified applicants to attach to city structures in the rights-of-way. A person who purchases or otherwise acquires a City structure is subject to the requirements of this section.
- (B) Make-Ready. The rates, fees, terms and conditions for the make-ready work to collocate a small wireless facility on a pole owned or controlled by the City must be nondiscriminatory, competitively neutral, comply with this Chapter and be subject to the following:
- (1) The City or any person owning, managing, or controlling the poles owned by the City will provide a good faith estimate for any make-ready work reasonably necessary to make a specific city pole suitable for attachment of the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.
 - (2) The City or any person owning, managing, or controlling the poles owned by the city shall not require more make-ready work than required to meet applicable codes or may be reasonably necessary to avoid interference with other attachments on the pole. Fees for make-ready work shall not include costs related to pre-existing or prior damage and non-compliance, unless such fees are necessary to accommodate the proposed attachment on the pole. Fees for make-ready work including any pole replacement shall not exceed actual and direct costs, or the amount charged to others for similar work and shall not include any contingency based consultant fees or expenses of any kind.

12.20.090 – Rates for ROW and Collocation on City Structures in the ROW

- (A) The recurring rate for use of the ROW and attachment of small wireless facilities to a City structure in the ROW shall be subject to the following requirements:
- (1) Annual Rate. A person-wireless provider authorized to place small wireless facilities and any related pole in the rights-of-way will pay to the City compensation for use of the rights-of-way and collocation on city structures in the

ROW a rate in accordance with applicable state and federal law and set by resolution of the City Council.

- (2) Cease Payment. A wireless provider~~person authorized to use the ROW and/or city structures for a small wireless facility~~ may remove one or more of its wireless facilities at any time from the rights-of-way and city structures in the ROW with the required permits, ~~and~~ The wireless provider will cease owing~~paying~~ the City compensation as of the date of the complete removal of the facilities and restoration of the site to the condition that existed prior to the deployment, for such removed facilities.