



Overview of Draft Town Manager Regulations Providing Grant of Location Procedures and Standards for Wireless Communication Facilities Located in Public Ways

The Town of Barnstable is in the process of developing regulations to address wireless communication facilities in the public ways. An initial draft of the regulations is being made available to the public for review and comment. This draft is being issued for discussion purposes only.

The purpose of these regulations is to provide a uniform, publicly available, comprehensive grant of location process and standards for the location, installation, height, appearance of wireless communications facilities in the public ways, consistent with Town aesthetic and public safety criteria and with applicable state and federal law.

With these regulations, the Town seeks to maximize local control of wireless communications facilities in the public ways and achieve compliance with federal laws. A municipality cannot decline to process wireless permit applications (enact a moratorium) on the ground that it needs time to update its permitting regulations and procedures.

The authority to adopt and implement these regulations, referred to as “grants of location”, lies with the Town Manager.¹

Town Regulations are Subject to Federal Telecommunications Act Limitations

The Town retained outside counsel to assist with drafting these regulations to achieve maximum control of wireless facilities, while recognizing these regulations must be in compliance with Federal Telecommunications Act limitations. As a result of those limitations, the Town:

- Cannot prohibit or effectively prohibit the provision of wireless communications facilities and service;
- Unreasonably discriminate among providers of functionally equivalent services; or
- Deny a request for placement, construction or modification of wireless communications facilities on the basis of environmental/health effects of radio frequency emissions to the extent that the facilities comply with the Federal Communications Commission’s (FCC) radio frequency emissions regulations.

Decisions must be made within a reasonable time, based upon “shot clock” intervals established by the FCC. Decisions must be made in writing and supported by a timely statement of reasons based upon substantial evidence in the record; decisions are subject to appeal.

¹ Chapter 121, Article II of Town Code; Chapter 166 of the General Laws

Overview of Regulations

The following is a summary of the contents of the draft regulations.

Authority, Scope and Applicability

Outlines the authority for the Town Manager to regulate procedures and standards for the construction of Wireless Communications Facilities within the layout of a public way or public place controlled and maintained by the Town.

Purpose and Intent

Explains the public purpose and intent of the regulations, outlining that the regulations are drafted to comply with federal law, and what these regulations are not intended or able to regulate.

Definitions

The meaning of terms used in the regulations.

Scope of Regulations

Establishes what the regulations govern, and what types of applications they do not apply to.

Grant of Location Application Procedures

Establishes procedures for filing and processing grant of location applications and issuing decisions. This section addresses these topics, amongst others:

- Eligible applicants
- No speculative construction
- Application filing requirements; allowance of batch applications
- Pole owner permission to attach to poles
- Additional permits are required (building, historic, etc.)
- How to file an application and review of applications for completeness
- Non-recurring and recurring fees per FCC guidance
- Peer review
- Shot clock intervals for permit decisions
- Public hearing procedures
- Issuing decisions and appeals

Grant of Location Standards

Establishes review standards for grant of location applications. These standards are based on aesthetic and public safety considerations. The standards seek to ensure wireless telecommunication facilities:

- Avoid adverse impacts on traffic and pedestrian safety
- Specifies preferred locations and discourages use of scenic ways; informed by input from Planning
- Prefers use of existing utility poles vs construction of new poles for wireless

- Requires demonstration of compliance with the FCC’s Radio Frequency Safety (RFE) regulations in application, as built stage and on an ongoing basis
- Addresses appearance and placement, including height, size, shielding wires, grounding, guy wires, lighting, security, non-interference with trees and other users of the public ways

Standard Conditions for Grants of Location

Establishes a standardized set of conditions that will apply to all grants of location, including:

- Effect of non-use
- Insurance
- Indemnification
- RFE monitoring reports
- As-built drawings
- Maintenance of current contact information
- Compliance with Dig-Safe and double pole removal procedures

Process & Next Steps

The draft regulations are being made available for public comment. Associated design guidelines, applications, instructions and forms are in development. A formal hearing process on the regulations will be necessary for adoption. Zoning for wireless facilities on private property and regulations for modifications to existing wireless facilities are being handled separately; different laws and procedures apply.

Public comment on these regulations can be directed to:

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