

1 IN THE BOARD OF COUNTY COMMISSIONERS

2 FOR WASHINGTON COUNTY, OREGON

3 In the Matter of Adopting Rules for) RESOLUTION AND ORDER
4 Personal Wireless Service Facilities Located) No. 19-102
5 in Public Road Rights-of-Way Pursuant to)
6 ORS 374.309, Delegating to the)
7 Department of Land Use & Transportation)
8 Authority to Enforce and Modify said Rules)
9 and Regulations, and Supplementing)
10 Resolution and Order 70-250,)
11 Resolution and Order 77-76,)
12 Resolution and Order 78-29 and Resolution)
13 and Order 98-197)

14
15 This matter having come before the Washington County Board of Commissioners at its
16 regular meeting of November 12, 2019; and

17 It appearing to the Board that ORS 374.305 provides that a person may not place, build or
18 construct on the right-of-way of any County road any approach road, structure, pipeline, ditch,
19 cable or wire, or any other facility thing or appurtenance, or substantially alter any such facility,
20 thing or appurtenance or change the manner of using any such approach road without first
21 obtaining written permission from the Board of County Commissioners; and

22 It appearing to the Board that ORS 374.309 provides the Board of County Commissioners
23 shall adopt reasonable rules and regulations and may issue permits, not inconsistent with the
24 law, for the use of rights-of-way of county roads for the purposes described in ORS 374.305; and

25 It appearing to the Board that the adopted rules and regulations and permits issued shall
26 include provisions, terms, and conditions that in the judgment of the Board of County
27 Commissioners are in the best interest of the public for the protection of the road and the
28 traveling public; and

1 It appearing to the Board, that the Federal Communications Commission (FCC) has
2 adapted a Declaratory Ruling and Third Report and Order titled "Accelerating Wireless Broadband
3 Deployment by Removing Barriers to Infrastructure Investment" (FCC 18-133) which, among
4 other things, requires standards applied to personal wireless service facilities to be deployed in
5 the public right-of-way to be published in advance; and

6 It appearing to the Board that consistent with state law, federal law, and FCC regulations,
7 it necessary to adopt reasonable and uniform standards and procedures for the orderly
8 deployment, construction, installation, colocation, modification, operation, relocation and
9 removal of personal wireless service facilities for the protection of the road and traveling public;
10 and

11 It appearing to the Board that the Charter of Washington County, adopted November 4,
12 2014, enables the Board of County Commissioners to delegate matters of County concern to
13 various administrative departments; and

14 It appearing to the Board that through Resolution and Order 70-250 and Resolution and
15 Order 77-76 the Board of County Commissioners assigned certain authority to the Department of
16 Land Use & Transportation to issue permits and seek compliance with rules and regulations
17 adopted by the Board pursuant to ORS 374.310; and

18 It appearing to the Board that by Resolution and Order 70-250 and Resolution and Order
19 77-76, the Board adopted reasonable rules and regulations and requiring permits for use of the
20 rights-of-way of County roads and further amended Resolution and Order 77-76 by Resolution
21 and Order 78-29 relating to County jurisdiction over dedicated ways and county roads and by
22 Resolution and Order 98-197 relating to collection and disposal of signs unlawfully placed in the

1 County right-of-way; and

2 It appearing to the Board that this Resolution and Order should supplement Resolution
3 and Order 70-250, Resolution and Order 77-76, Resolution and Order 78-29 and Resolution and
4 Order 98-197; and

5 It appearing to the Board that the rules for personal wireless service facilities located in
6 public road rights-of way, as set forth in "Exhibit A", are in the best interest of the public to
7 protect the road and traveling public; it is now further

8 RESOLVED AND ORDERED that this Board does hereby adopt the rules for personal
9 wireless service facilities located in the public road rights-of-way under County jurisdiction, as set
10 forth in "Exhibit A"; and it is further

11 RESOLVED AND ORDERED that the rules in "Exhibit A" may be amended by the Director of
12 Land Use & Transportation to ensure compliance with state law, federal law and federal
13 regulations and the Director will inform the Board of any amendments required; and it is further

14 RESOLVED AND ORDERED that the Department of Land Use & Transportation is directed
15 to implement and enforce the standards and procedures in "Exhibit A" on the date of this
16 Resolution and Order.

17 DATED this 12th day of November, 2019.

18
19
20 Approved as to form:
21 Cortney D. Duke-Driessen
22 Sr. Assistant County Counsel
23 Dated and Signed: October 28, 2019
24 R&O# 19-102
25
26

	AYE	NAY	ABSENT
HARRINGTON	✓	_____	_____
SCHOUTEN	✓	_____	_____
TREECE	✓	_____	_____
ROGERS	✓	_____	_____
WILLEY	_____	_____	_____

BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON

Kathryn Harrington 11/21/19

CHAIR KATHRYN HARRINGTON

Cortney Duke-Driessen

RECORDING SECRETARY

Exhibit A
Washington County
Rules for Personal Wireless Service Facilities
Located in Public Road Rights-of-Way
November 12, 2019

I. PURPOSE AND INTENT

Consistent with state and federal law and regulations established by the Federal Communications Commission (FCC), Washington County (County) is establishing reasonable and uniform rules and procedures for the orderly deployment, construction, installation, colocation, modification, operation, relocation and removal of Personal Wireless Service Facilities, as defined herein.

These rules and procedures seek to ensure that such facilities are designed and located in the best interest of the public, including the protection of County road functions, protection of the traveling public and preservation of the aesthetic character of the community.

II. APPLICABILITY

These rules apply to personal wireless service facilities within public road rights-of-way (ROW) subject to County roadway authority. These rules supplement administrative rules adopted to manage and administer the ROW in Board Resolution and Order (R&O) 70-250, and subsequent R&Os 77-76, 78-29 and 98-197.

Personal wireless service facilities located in the ROW shall meet the definition for either Colocation or Small Wireless Facility, as defined herein. These rules apply to both Colocated Wireless Facilities and Small Wireless Facilities, unless otherwise specified.

III. DEFINITIONS

Where words or terms used in these rules are not defined below, and are both applicable to these rules and defined in Oregon Revised Statute (ORS), Oregon Administrative Rule (OAR), Washington County Community Development Code Section 430-109.2 or Washington County Road Design and Construction Standards (WCRDCS), those definitions shall apply.

A. Applicant. Any person or entity who submits an Application under these rules.

B. Application. A written request, on a form provided by the County, for a Permit to place, build, construct, maintain, replace, repair or remove any facility, thing or appurtenance in the public road ROW.

- C. **Colocate or Colocation.** To mount or install an antenna or antenna facility on a pre-existing structure, including modifying/replacing a pre-existing structure for the purpose of mounting or installing a Personal Wireless Services Facility.
- D. **FCC.** The Federal Communications Commission of the United States.
- E. **Legally Constructed.** In conformance with all applicable laws at the time of establishment.
- F. **Minimally Off-set.** An antenna or antenna array mounted to the face of a structure and protruding no more than 18 inches from the outermost mounting point.
- G. **Permit.** A written authorization (in electronic or hard copy format) to place, build, construct, substantially alter, maintain, repair or remove a Wireless Facility or a Pole to support a Wireless Facility, at a specified location in the public ROW.
- H. **Permittee.** Any party that has received a Permit and is responsible for abiding by Permit conditions of approval, including service providers and owners of Personal Wireless Service Facilities, regardless of applicant.
- I. **Personal Wireless Service Facility (Wireless Facility).** The collection of equipment at a fixed location or locations and any supporting structure that enables provision of personal wireless services including but not limited to the following:
 - 1) Transceivers and antennas for transmitting or receiving radio frequency signals or electromagnetic radiation (e.g. wireless telecommunication service and wireless internet/Wi-Fi);
 - 2) Accessory equipment such as radios; cabinets and shrouds; cut-off switch; coaxial, fiber-optic or other cabling, power supply;
 - 3) Comparable and associated equipment, regardless of technological configuration; and
 - 4) Small Wireless Facilities as defined below.
- J. **Pole.** A legally constructed pole, such as a utility, lighting, traffic, or similar made of wood, concrete, metal or other material, located or to be located within the public ROW.

K. RF. Radio frequency.

L. Replace or Replacement. The Replacement of an existing Pole with a new Pole that is substantially similar in design to the existing structure.

M. Service Provider. Any person, agency, corporation or other entity that maintains and operates a Wireless Facility in order to provide wireless services.

N. Small Wireless Facility. A Wireless Facility meeting all of the following:

- 1) Mounted on a structure 50 feet or less in height including antennas; or mounted on a structure no more than 10% taller than other adjacent structures; or mounted so that it does not extend an existing structure to a height of more than 50 feet or by more than 10%, whichever is greater;
- 2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than 3 cubic feet in volume;
- 3) All other equipment associated with the structure, including any pre-existing wireless equipment, is no more than 28 cubic feet in volume; and
- 4) The Wireless Facility, including antennas and associated equipment, complies with FCC requirements for registration, radio frequency emissions and other applicable standards.

IV. JURISDICTIONAL COORDINATION

For projects located within the incorporated area of a city, adjustments to the specific County design requirements herein may be made in cooperation with the city.

V. PERMITTING PROCESS

Applicants seeking the right and privilege to construct lines and facilities in the County ROW in accordance with ORS 758.010 must submit a completed utility permit application as posted on Washington County's website or obtained from the Department of Land Use & Transportation Operations and Maintenance Division. The applicant is responsible for obtaining any necessary City approvals prior to constructing improvement under County permit.

Applicants are advised that batched applications that exceed more than 5 locations in a single permit application are likely to overload the County's resources to review and exceed the presumption of the reasonableness of the applicable FCC shot clock period.

Requests to review more than 25 applications in any 30 period may also overload the County's resources to review and exceed the presumption of the reasonableness of the applicable FCC shot clock period.

A. Submittal Requirements. In addition to the requirements provided in the utility ROW permit application, Wireless Facility applications shall contain the following:

- 1) **Construction Drawings.** Construction drawings depicting all existing and proposed improvements, equipment and conditions within the proposed area of construction for the project in plan view, including but not limited to:
 - a. Poles, posts, pedestals, traffic signals, equipment cabinets, antennas, and cables (show all relevant volumetric measurements for equipment cabinets and antennas);
 - b. Traffic lanes, sidewalks, pedestrian ramps, driveways, curbs, gutters, storm drains, ditches and culverts;
 - c. All private properties and property lines;
 - d. Above and (if applicable) below-grade utilities and related structures and appurtenances;
 - e. Streetlights, decorative poles, and permanent signage;
 - f. Street furniture; and
 - g. Existing trees, planters, fences and other landscaping features.
- 2) **Elevations.** Scaled elevations from at least two directions to adequately show all elements of the proposed Wireless Facility, including antennas and any other attached equipment, protrusions or appurtenances extending from the pole.
- 3) **Additional Information.** Additional information as applicable to addressing specific federal standards, when submitting an application subject to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), include:

- a. The overall structure height on February 22, 2012.
 - b. A statement explaining how Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) applies. As part of this written statement, address whether and why the support structure qualifies as an existing tower or existing base station; and whether and why the proposed colocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance as described in Title 47 of the Code of Federal Regulation §1.6100 et seq.
 - c. When relying on an adjacent structure (located within 200 feet of the proposed facility) to determine the maximum height of a Small Wireless Facility, identify and call out such structures' overall height from finished ground level in the construction drawings.
- 4) **Regulatory Authorization.** A copy of the FCC operating license issued to the service provider for the proposed Wireless Facility. In the event that the FCC does not issue an individual operating license for the proposed use and location, a copy of the service provider's current geographic area license shall be provided.
 - 5) **Authorization from Owner.** A copy of an authorization for use of the structure from the owner of the pole, or other structure, on or in which the Wireless Facility will be placed or attached as applicable.
 - 6) **Structural analysis.** If attached to County infrastructure, structural analysis prepared and stamped by a professional engineer licensed in the State of Oregon, including evaluation of the existing and/or proposed wireless support structure and foundation to demonstrate the support structure is adequate to safely support the proposed Wireless Facilities and comply with applicable standards for structural stability.
- B. Time Frame for Completeness Review and Final Action (Shot Clock).** The County will notify the applicant in writing when an application is determined incomplete and of any final action on the permit application. The County will identify all missing items when notifying an applicant that an application is incomplete.
- 1) **For the purposes of this subsection the following applies:**

A batched application is a single application that identifies multiple Small Wireless Facility sites, pursuant to *FCC 18-133*.

Shot Clock is the presumptive reasonable time the County has to review an application and take final action on a permit application, less the tolling period; and

Tolling is the period between notification of the incomplete application and resubmittal.

- 2) **Review and action on submitted permit applications will occur in accordance with the following:**
- a. For Colocated facilities:
 1. Small Wireless Facility – the County will take action within 60 days of receiving application(s), including batched applications, less any tolling period.
 2. Non-Small Wireless Facility – the County will take action within 90 days of receiving application(s), less any tolling period.
 - b. For Small Wireless Facilities on new structures – the County will take action within 90 days of receiving application(s), including batched applications, less any tolling period.
 - c. For batched applications that contain both Small Wireless Facilities colocations and new structures – the County will take action on applications within ninety (90) days of receiving application(s), less any tolling period.
 - d. Tolling for incomplete applications will occur as follows:
 1. Small Wireless Facility Applications – if applicant is notified of missing or incomplete items (an incomplete application) on or before the 10th day after initial application submission, the shot clock (or time frame for final action) will be reset. If notification occurs after the 10th day and before the 30th day after initial application, the application shot clock will be tolled or paused until additional information is received.
 2. For Colocated Facilities that are not Small Wireless Facility Applications - if applicant is notified of missing or incomplete items on or before the 30th day after initial application

submission, the application shot clock will be tolled or paused until additional information is received.

3. For all resubmitted applications, the applicant will be notified of any remaining missing or incomplete items on or before the 10th day after resubmission and the application shot clock will be tolled or paused until additional information is received.

VI. COUNTY MANAGEMENT OF THE RIGHT-OF-WAY

- A. **Additional Requirements and Regulations.** The County may develop, publish, update or amend permit application requirements and conditions, forms, checklists, guidelines, informational handouts and other related materials deemed necessary, appropriate or useful for processing any application governed by these rules.
- B. **Responsibility for Compliance.** The permittee shall be severally responsible for compliance with these rules and an action for enforcement may be brought against the permittee. A citation may be issued and prosecuted pursuant to the County Uniform Citation Procedures, County Code Chapter 1.08.
- C. **Maintenance and Modification.** A permittee shall, at its sole cost and expense, keep and maintain its Wireless Facilities in the public ROW in a safe condition, and in good order and repair in accordance with ORS Chapter 758. Any permittee or lessees using space in ducts, conduits or on structures located in the ROW shall comply with these rules.

Repairs, removals and modifications that maintain functional capacity, aesthetics and structural integrity, are not exempt from permit requirements and not explicitly authorized by the permit for the installation of the wireless facility. A separate permit for traffic control and modifications that require adherence to these and other right-of-way rules is necessary.

- D. **Abandoned Wireless Facilities.** Wireless Facilities are considered abandoned when no licensed service provider has operated from the facility site for a period of one (1) year. Within ninety (90) days of County notification, the permittee or their designee, shall obtain a right-of-way permit and remove all above-ground Wireless Facilities from the site and restore the site to its previous condition. In the event the facilities are not removed within this time period, the County may deem the Wireless Facility a nuisance and abate in accordance with applicable laws governing removal, restoration and cost recovery. If any abandoned Wireless Facility has not been removed in accordance with the timeframe above, the County may suspend issuance of new

Wireless Facility permits for the applicable service provider and/or facility owner until the abandoned Wireless Facility has been removed, the site restored and cost recovery completed as applicable.

- E. Rearrangement and Relocation.** Washington County has the authority to designate the location where lines, fixtures and facilities may be located, and subject to ORS 758.025 may order the location of any such line, fixture or facility to be changed when deemed expedient by the County. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the County is a public nuisance and may be abated accordingly.

If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's Wireless Facility within a reasonable time after the County's notice in accordance with applicable laws, the County may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense.

The County may exercise its rights to rearrange or relocate the permittee's Wireless Facility without prior notice to permittee when the County determines that the County work is immediately necessary to protect public health or safety. The permittee shall reimburse the County for all costs and expenses in connection with such work in accordance with applicable laws governing recovery of costs for nuisance abatement.

VII. LOCATION REQUIREMENTS

- A. Locations.** New poles must comply with the applicable location standards in the WCRDCS and must be placed as close as feasible to shared property lines.
- B. Prohibited Support Structures.**
- 1) Installation of structures without antennas based on speculation of future antenna installation, also known as speculation ("spec") structures is prohibited.
 - 2) Installation of Wireless Facilities on any of the following located in the public ROW is prohibited:
 - a. Any traffic control device, including but not limited to traffic signals, signs, traffic poles, cabinets and related devices;
 - b. New non-replacement wood poles; and

c. Trees.

- 3) The County may elect to prohibit installation on County-owned street furniture located in the public ROW on a non-discriminatory basis including but not limited to installations on street lighting infrastructure and utility poles.

VIII. DESIGN STANDARDS

These standards shall be followed to the extent technically feasible. When strict adherence to the design standards in this section would violate federal law, the applicant may submit evidence that compliance would result in a material prohibition.

A. Antennas.

- 1) Shall be either:
 - a. Concealed in canisters or other opaque shrouds; or
 - b. Minimally Off-set.
- 2) Antennas, canisters or shrouds must substantially match the coloring of the pole. Attachment of such antennas shall occur consistent with the standards for poles and attachments (VIII.C.) below.

B. Accessory Equipment.

- 1) **Installation Generally.** All cables, wires and other connectors must be routed through conduits within the pole or underground so that attachments, cables, wires and other connectors are concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, Applicants shall route them through the minimum number of external conduits or shrouds that match the coloring of the pole. All visible accessory equipment shall be colored, painted or constructed with non-reflective material that matches or is similar to the pole; ground-mounted equipment may match the pole or pre-existing immediately adjacent ground-mounted equipment.

All non-antenna accessory equipment shall be installed underground or integrated into the base of the pole where the existing utilities are primarily located underground.

- 2) **Underground Accessory Equipment.** When accessory equipment is installed underground all equipment must be installed in an environmentally controlled vault that is load-rated to meet the County's standards and specifications. Underground vaults located in a sidewalk must be constructed with a slip-resistant cover and meet ADA standards and are only allowed when installation adjacent to the sidewalk is not feasible as determined by the County. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk.
- 3) **Pole-Mounted Accessory Equipment.** Antennas and other pole-mounted equipment must be mounted at least 10 feet above finished ground level and must be oriented away from adjacent sidewalks. No more than three associated equipment cabinets, not to exceed a total of 28 cubic feet, may be mounted on the pole.
- 4) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure.
- 5) **Ground-Mounted Accessory Equipment.** Ground-mounted equipment shall meet clear zone requirements as defined in the WCRDCS and be located behind the sidewalk.

C. Poles and Attachments.

- 1) **Replacement Poles for Wireless Facilities Other than Small Wireless Facilities.** Existing poles may be replaced provided the new pole is not more than 20 feet higher than the pole to be replaced. The replacement structure must match or be similar to the material and color scheme of adjacent poles. Antennas, excluding whip antennas, may extend no more than 10 feet above the support pole.
- 2) **Wireless Facility Placement on Street Lighting Infrastructure.** Applicants that propose to install Wireless Facilities on existing streetlights must remove and replace the existing streetlight pole with a pole that is substantially similar to the County's standards and specifications. To mitigate any material changes in the street lighting patterns, the replacement pole must:
 - a. Be located as close to the removed streetlight pole as feasible;

- b. Match or be substantially similar to the design of adjacent existing streetlights;
and
 - c. Include luminaires and shielding as required.
- 3) **Wood Utility Poles.** When side arm or extension mounts are utilized, cables, wires and other connectors must be concealed within the side-arm mount or extension arm.
- 4) **New (Non-Replacement) Poles for Small Wireless Facilities.** Applicants that propose to install Small Wireless Facilities on a new non-replacement pole must:
- a. Install a new stealth pole substantially similar to existing street lighting infrastructure in the immediate vicinity.
 - b. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or non-wood composite (consisting of fire-resistant materials such as fiberglass, carbon pultruded, or resin) pole capable of concealing all the antenna equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed thirteen (13) inches and any base enclosure diameter shall not exceed twenty-four (24) inches. All antennas, whether on a new streetlight or other new pole, must be installed in a manner that reduces visual impact, such as color matching, shrouding or otherwise integrated into the pole design. Pole top canisters may be no larger than twenty (20) inches in diameter.

D. Site.

- 1) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however connectors or receptacles may be temporarily installed to provide power when an emergency, as declared by federal, state or local officials, results in power loss to the site.
- 2) **Cabling.**
- a. **Overhead cables and lines.** The County shall not approve new overhead utility cables or lines merely because compliance with undergrounding requirements would increase the project cost. This provision does not apply where similar cables and lines exist.

advertisements unless expressly approved by the County or required by law or recommended under FCC, OSHA or other United States governmental agencies for compliance with RF emission regulations. All required and permitted signage must be oriented away from adjacent sidewalks.

- 7) **Site Security Measures.** Wireless Facilities may incorporate reasonable and appropriate site security measures such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism (consistent with the shut off standards below). All exterior surfaces on Wireless Facilities shall be constructed from or coated with graffiti resistant materials, as noted on the submitted plans.
- 8) **Shut Off.**
 - a. Electrical and RF disconnects are required on or in the pole for each Wireless Facility and shall be clearly labeled.
 - b. In the event of an emergency where any Wireless Facility in the public road ROW creates or is contributing to an imminent danger to health, safety, or property, the County may protect, support, temporarily disconnect, remove, or relocate any or all parts of such facility, and charge the service provider and/or facility owner for costs incurred in accordance with applicable laws.

The County will engage the emergency contact based on information of record or best available, when possible for prior notice, and if not possible because of emergent and imminent danger, will notify the facility operator promptly afterwards. All costs associated with any removal or protection of Wireless Facility equipment located in the ROW shall be the sole responsibility of the service provider and/or facility owner.

- 9) **Street Trees.** To preserve existing landscaping in the public ROW, all work performed in connection with Wireless Facilities shall minimize the impacts to adjacent street trees. If tree trimming or removal is required, applicant is required to follow County tree removal and permit standards which may require the installation of a new street tree. For the purposes of this section, a street tree is defined as a tree required through the development review process or installed as part of a county project.
- 10) **Utility Connections.** Undergrounded cables and wires must transition directly into the pole base without external housing. All cables, wires and connectors between

the underground conduits and the antennas and other accessory equipment shall be concealed from view within:

- a. Internal risers or conduits if on a concrete, composite or similar pole; or
- b. Cable shrouds or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. Minimum standards for flush mounting will be determined by electrical safety standards and pole owner requirements.

11) Visibility.

- a. Reflective elements are only allowed when determined necessary for traffic safety by the County.
- b. Wireless Facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, or other applicable regulations for health and safety. The provisions in this subsection shall not be interpreted or applied to prohibit installations of streetlights or luminaires installed on new or replacement poles as allowed under these standards.