

# M emorandum

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*Michael G. Dzugan*  
City Manager

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**TO:** The Honorable Mayor and City Council

**DATE:** July 12, 2018

**SUBJECT:** Small Wireless Facilities Development Act/Code Amendments

The Illinois Small Wireless Facilities Deployment Act became effective June 1, 2018. The Act creates state-wide regulations and a process for the permitting and deployment of new small cell wireless facilities in the public right-of-way. The Act determines fees, a permitting process, and restrictions on height, and placement that wireless providers and local governments must follow.

The Act requires municipalities adopt an ordinance that makes available to wireless providers the rates, fees, and terms of the “colocation” of small wireless facilities on wireless structures and utility poles by August 1, 2018. Overall, the Act does not provide municipalities with much control over the location and process for the installation of small wireless facilities.

The Act does however allow for a municipality to create “written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment, and aesthetic requirements.”

The Act is ambiguous or lacks clarity on many significant issues related to municipal authority. The City Attorney and staff have drafted an ordinance implementing the Act, which includes design standards (Section 58-269). Generally, the design standards look for a sleek design for wireless facilities located on existing utility poles (utility poles include com ed, street lights and traffic signals); and discouraging a new pole for the sole purpose of locating wireless facilities in a right of way in residential districts. Staff believes that the ordinance is in compliance with the Act but perceives that the degree of municipal authority might be subject to future amendment as the practical application of the Act evolves.

Attached for a 1<sup>st</sup> reading is the draft ordinance, which includes pictures of acceptable designs as Addendum A, Exhibit 1.

Attachment

**ORDINANCE NO. O-2018-**

**AN ORDINANCE PROVIDING FOR THE LICENSING AND REGULATION OF AND  
APPLICATION FOR SMALL WIRELESS FACILITIES IN RIGHTS-OF-WAY**

**WHEREAS**, the Illinois General Assembly has recently enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act (the "Act") (50 ILCS 835/1 *et seq.*), which became effective June 1, 2018; and

**WHEREAS**, the City of Wheaton (the "City") is an Illinois municipality in accordance with the Constitution of the State of Illinois of 1970; and

**WHEREAS**, the City is authorized under the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*), the Illinois Constitution, and Illinois law to adopt ordinances pertaining to the public health, safety and welfare; and

**WHEREAS**, the City is further authorized to adopt the amendments contained herein pursuant to its authority to regulate the public right-of-way under section 11-80-1 *et seq.*, of the Illinois Municipal Code; and

**WHEREAS**, the City uses the public right-of-way within its City limits to provide essential public services to its residents and businesses. The public right-of-way within the City is a limited public resource held by the City for the benefit of its citizens and the City has a custodial duty to ensure that the public right-of-way is used, repaired, and maintained in a manner that best serves the public interest; and

**WHEREAS**, the City is authorized, under existing state and federal law, to enact appropriate regulations and restrictions relative to small cell facilities, distributed antenna systems, and other personal wireless telecommunication facility installations in the public right-of-way.

**NOW, THEREFORE, BE IT ORDAINED** by the Corporate Authorities of the City of Wheaton, DuPage County, Illinois, as follows:

**SECTION 1:** That Chapter 58 "Streets and Sidewalks and Other Public Places" of the Wheaton City Code of Ordinances of the City of Wheaton, Illinois, is hereby amended by the addition of an Article IX to be entitled "Small Wireless Facilities in Rights-of-Way", Sections 58-250 through 58-278, which shall read as follows:

**Article IX: SMALL WIRELESS FACILITIES IN RIGHTS-OF-WAY**

**Section 58-250. Purpose and Scope.**

- (a) *Purpose.* The purpose of this Article is to establish regulations, standards, and procedures for the siting and collocation of small wireless facilities on rights-of-way within the City's jurisdiction, or outside the rights-of-way on property zoned by the City exclusively for commercial or industrial use, or compatible use easements, in a manner that is consistent with the Small Wireless Facilities Deployment Act, 50 ILCS 835/1 *et seq.*
- (b) *Conflicts with Other Ordinances.* This Article supersedes all Chapters or parts of Chapters of the Wheaton City Code adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(c) *Conflicts with state and federal laws.* In the event that applicable federal or state laws or regulations may conflict with the requirements of this Article, the wireless provider shall comply with the requirements of this Article to the maximum extent possible so long as this Article is not in violation of federal or state laws and regulations.

### **Section 58-251. Definitions.**

For the purposes of this Article, the following terms shall have the following meanings:

**Act** – Illinois Small Wireless Facilities Deployment Act (50 ILCS 835/1 et. seq.) and; as may be amended from time to time.

**Antenna** – communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

**Applicable codes** – Public right-of-way ordinances of general application and uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, as incorporated into the City Code, including the National Electric Safety Code.

**Applicant** – any person who submits an application and is a wireless provider.

**Application** – a request submitted by an applicant to the City for a permit to collocate small wireless facilities, or a request that includes the installation of a new utility pole or wireless support structure for such collocation, as well as any applicable fee for the review of such application.

**Authority** – City and units of local government that have jurisdiction and control for use of public rights-of-way as provided by the Illinois Highway Code for placements within public rights-of-way or has zoning or land use control for placements not within public rights-of-way.

**Authority utility pole** – a utility pole owned or operated by an authority in public rights-of-way.

**City** – the City of Wheaton.

**Collocate or collocation** – to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

**Communications service** – cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.

**Communications service provider** – a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

**Design Standards** – criteria established by this Article to reasonably reduce the visual impact of Small Wire Facilities in designated areas of the City.

**FCC** – the Federal Communications Commission of the United States.

**Fee** – a one-time charge.

**Historic landmark** – a building, property, or site that is either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, or site by an ordinance adopted by the authority pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

**Law** – a federal or State of Illinois statute, common law, code, rule, regulation, order, or local ordinance or resolution.

**Micro wireless facility** – a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

**Permit** – a written authorization required by the City to perform an action or initiate, continue, or complete a project subject to this Article.

**Permitted Use** – a small wireless facility: applied for; installed and operated in full conformance with the Small Wireless Facilities Deployment Act and this Article

**Person** – an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

**Public safety agency** – a functional division of the federal government, the State of Illinois, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

**Rate** – a recurring charge.

**Right-of-way** – the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include authority-owned aerial lines.

**Small wireless facility** – a wireless facility that meets both all of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer

switch, cut-off switch, and vertical cable runs for the connection of power and other services, and as may be subject to the Design Standards of this Article.

**Variation** – a variance granted by the City Council to the height or Design Standards of this Article.

**Utility pole** – a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

**Wireless facility** – equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

**Wireless infrastructure provider** – any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the authority.

**Wireless provider** – a wireless infrastructure provider or a wireless services provider. This does not include and expressly excludes any person or who is providing service to or for a private niche market.

**Wireless services** – any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

**Wireless services provider** – a person who provides wireless services.

**Wireless support structure** – a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

## **Section 58-252. Permitted Use.**

Small wireless facilities are permitted uses and are subject to administrative review, except as provided in Sections 58-267 and 58-268 regarding height exceptions or variances and design standards, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zone or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use, or (iii) in compatible use easements. Utility poles owned and operated by entities other than the City or a franchisee utility and which

are intended for uses other than the collocation of small wireless facilities are not permitted uses.

**Section 58-253. Permit Required.**

An applicant shall obtain one or more permits from the City to collocate a small wireless facility. An application received shall be processed, and permits issued shall be subject to all terms, conditions and requirements of the Act and this Article.

**Section 58-254. Completeness of Application.**

Within 30 days after receiving an application, the City must determine whether the application is complete and notify the applicant in writing. If an application is incomplete, the City shall specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within 30 days after all documents, information, and fees specifically required by the City's permit application are submitted by the applicant to the City.

Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

**Section 58-255. Application Process.**

The City shall process applications as follows:

- (a) Multiple applications by different applicants for collocation on the same utility pole or wireless support structure shall be processed based on a first fully complete application, first served basis.
- (b) An application to collocate a small wireless facility on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 90 days.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided in this Article.

- (c) A complete application to collocate a small wireless facility that includes the installation of a new utility pole or a new wireless support structure shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 120 days.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its

intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Article.

- (d) The City shall deny an application not meeting the requirements of this Article.
- (e) If the City determines that applicable codes, ordinances or regulations that concern public safety, or the collocation requirements and conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the applicant or provider.

The City shall document the basis for a denial, including the specific code provisions or application conditions on which the denial was based, and send the documentation to the applicant on or before the day the City denies an application.

The applicant may cure the deficiencies identified by the City and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require a new application, new full application fee and recommencement of the City's review period.

The applicant shall notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the resubmitted application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application cure does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

### **Section 58-256. Tolling.**

The time period for applications may be further tolled by:

- (a) The express agreement in writing by both the applicant and the City; or
- (b) A local, State or federal disaster declaration or similar emergency that causes the delay.

### **Section 58-257. Consolidated Applications.**

An applicant seeking to collocate small wireless facilities which qualify as permitted uses under Section 58-252 of this Article shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of utility pole or wireless support structure. Each consolidated application shall provide all the information required by Section 58-263 a-g of this Article for each small wireless facility at each location. If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.

### **Section 58-258. Collocation Completion Deadline.**

Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the City and the wireless provider agree to extend this period, or a delay is caused by make-ready work for an authority utility pole; or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

### **Section 58-259. Duration of Permits.**

The duration of a permit shall be for a period of 5 years, and the permit shall be renewed automatically for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole, or wireless support structure, does not comply with the applicable codes or local code provisions or this Article.

### **Section 58-260. Repeal.**

If 50 ILCS 835/1 *et seq.* is repealed or found unconstitutional by a court of competent jurisdiction, all permits granted by the City under this Article shall terminate at the end of their current term.

### **Section 58-261. Means of Submitting Applications.**

Applicants shall submit applications, supporting information, and notices by personal delivery to the Engineering/Building Department at the Wheaton City Hall located at 303 West Wesley Street, Wheaton, Illinois, or as otherwise required by the City.

### **Section 58-262. Application Fees.**

Application fees are hereby imposed as follows:

- (a) Applicant shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure and \$350 for each small wireless facility addressed in an application

to collocate more than one small wireless facility on existing utility poles or wireless support structures.

- (b) Applicant shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole or wireless support structure for such collocation.
- (c) All applications shall be accompanied by the required application fee. Application fees shall be non-refundable.
- (d) The City shall not require an application, approval, or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
  - (1) routine maintenance; or
  - (2) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of Section 58-263 a-g of this Article (Application Requirements); or
  - (3) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes, excluding City aerial lines.

Wireless providers, however, shall secure a separate City permit to work within rights-of-way for activities that affect traffic patterns or require lane closures.

### **Section 58-263. Application Requirements.**

A wireless provider shall provide the following information to the City as a material condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:

- (a) Site specific structural integrity and, for an authority utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
- (b) The location where each proposed small wireless facility utility pole, or wireless support structure, would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed;
- (c) Specifications and drawings prepared and certified by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;

- (d) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- (e) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;
- (f) Certification that the collocation complies with the Collocation Requirements and Conditions set forth in Sections 58-265 through 58-268 of this Article, to the best of the applicant's knowledge; and
- (g) In the event that the proposed small wireless facility is to be attached to an existing pole or wireless support structure owned by an entity other than the City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

#### **Section 58-264. License Agreement.**

City staff and the City attorney shall prepare a license agreement as allowed by the Act which shall include supplements for each small wireless facility installation. Submission of an executed license agreement within thirty (30) days after the applicant has been notified that its application is complete shall be a condition precedent to the issuance of the permit. An applicant may request modifications to a license agreement which may be approved by the City Manager. If the City Manager refuses to approve the modifications, the applicant may appeal such determination to the City Council. The appeal shall be in writing and specify the applicant's proposed modifications and reasons for the request. City staff will schedule a request for modifications on the City Council agenda no later than 21 (twenty-one) days after the receipt of the applicant's written request.

#### **Section 58-265. Public Safety Space Reservation.**

The City Manager, after review and consultation with the Public Works, Fire, and Police Departments, shall reserve space on City owned utility poles for future public safety uses of the City. Such reservation may preclude collocation of small wireless facilities if the City reasonably determines that any such reserved City utility poles cannot accommodate both uses.

#### **Section 58-266. Alternate Placements.**

With respect to an application for the collocation of a small wireless facility associated with a new utility pole, the City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the City it shall provide written certification describing the property rights, technical limits or material cost reasons that render the alternative location unsatisfactory pursuant to the criteria in this section. It shall be the burden of the applicant, by presentation of legally competent evidence, to

establish that the City's alternative proposed collocation imposes technical limits or additional material costs that render the alternative collocation unreasonable.

**Section 58-267. Height Limitations.**

The maximum height of a small wireless facility which qualifies as a permitted use under section 58-252 of this Article shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

- (a) If an applicant proposes a height in excess of 10 feet above a utility pole or wireless support structure on which the small wireless facility is proposed for installation, the applicant shall apply for a variation. The variation application shall require public notice as set forth in Section 5.7(A)(2) of Appendix A "Zoning" of the Wheaton Zoning Ordinance and a public hearing. All publication costs shall be born by the applicant. Hearing of the variation application shall be set before the City Council. It shall be the burden of the applicant requesting the variation to establish that the proposed variation in height:
  - (1) is technically necessary to provide service;
  - (2) is not merely for the convenience of the applicant;
  - (3) is due to unique circumstances or that the variation, if granted, will not alter the essential character of the locality;
  - (4) is due to the particular physical surroundings, shape, or topographical conditions of the proposed location which would bring a particular hardship upon the applicant if the height variation is not granted;
  - (5) has not been the result of conditions created by the applicant;
  - (6) will not be detrimental to the public welfare or injurious to other property improvements in the neighborhood in which the property is located; and
  - (7) will not endanger the public safety or substantially diminish or impair property values within 100 feet of the proposed height variation.
- (b) The variation hearing shall be heard by the City Council and may be continued from time to time to allow a thorough exposition of evidence associated with the variation standards described herein. A variance when granted shall limit the height of any proposed wireless facility to the higher of:
  - (1) 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
  - (2) 45 feet above ground level.

## **Section 58-268. Requirements.**

(a) A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the City or public safety agency, the wireless provider, at its own expense, shall remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not complying with the Code of Federal Regulations cited above. The burden to establish the good faith effort shall be on the wireless provider which shall timely deliver to the City all information necessary to determine its efforts to resolve the interference consistent with the sections of the Codes of Federal Regulations cited above. Failure to remedy the problem as required herein shall constitute a public nuisance and violation of this section subjecting the wireless provider to injunctive relief as well as fines consistent with the City Code.

(b) The wireless provider shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles, such as Planned Unit Development agreements, subdivision improvement agreements and annexation agreements; wireless support structures; and ground-mounted equipment located in the right-of-way.

(c) The wireless provider shall comply with spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way. Ground Mounted Utility Facilities as defined in Article VIII of this Chapter 58 in the right-of-way shall not be considered a small wireless facility and shall comply with the requirements of Article VIII of this Chapter.

(d) The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new utility pole or the modification of existing utility poles in a right-of-way unless it

complies with the City's design standards. If a permit is denied based on a conclusion that the proposed design does not comply with this Article, an applicant may appeal to the City Council following the procedures and standards set forth in 58-267 of this Article.

- (e) The wireless provider shall comply with generally applicable standards adopted by the City that are consistent with 50 ILCS 835/1 *et seq* pertaining to construction and public safety in the rights-of-way and Article VIII of Chapter 58 of the City Code, including, but not limited to, reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, utility pole extension requirements and signage limitations; and shall comply with reasonable nondiscriminatory requirements that are consistent with 50 ILCS 835/1 *et seq* and adopted by the City regulating the location, size, surface area and height of small wireless facilities, or the abandonment and removal of small wireless facilities.
- (f) The wireless provider shall not collocate small wireless facilities on City utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the utility pole or the electric supply zone of the utility pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the City utility pole and on the top of the utility pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the utility pole.

For purposes of this subparagraph (f), the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

- (g) For small wireless facilities installations on City traffic signals or street lighting poles, the wireless provider shall accept all maintenance responsibility of the City's traffic signal or street lighting equipment for the duration of the installation activity. The transfer of protection, operation and maintenance shall be to a qualified contractor that is prequalified by IDOT in the Electrical category. All traffic signal maintenance activity shall be completed by personnel certified by IMSA as a Level II Traffic Signal Technician. Any subsequent routine maintenance and/or modification to the wireless telecommunications facility may require a maintenance transfer of the City's traffic signal or lighting equipment at the discretion of City Engineer or his/her duly authorized designee.
- (h) The wireless provider shall comply with all applicable codes and local code provisions or regulations of general application that concern public safety.

- (i) The wireless provider shall comply with written design standards for decorative utility poles or reasonable concealment and aesthetic requirements set forth in Section 58-269 of this Article.
- (j) Subject to the subsection titled Permitted Use, and except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4), the City requires reasonable, technically feasible and non-discriminatory design or concealment measures for historic landmarks.
- (k) Any such design or concealment measures, including restrictions on a specific category of poles, may not have the effect of prohibiting any provider's technology. Such design and concealment measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility. Any applicant who maintains that the design standards prohibit its technology may apply for a design standard variation and shall have the burden of providing legally competent evidence that the effect of the regulations is to prohibit that provider's technology. Variation applications and procedures shall be consistent with Section 58-267 of this Article. The availability of small wireless facility concealment or design technology in the general marketplace, consistent with the standards set forth in Section 58-269, shall be *prima facia* evidence that the design and concealment measures required by this section are commercially reasonable and do not prohibit a provider's technology. The provider, however, shall have the right to refute the *prima facia* conclusion of reasonableness by clear and convincing evidence.

#### **Section 58-269. Design Standard.**

- (a) Small wireless facilities located in the following areas of the City shall be subject to the design standards as described in this section. The intent of these design standards is to minimize the negative aesthetic impact which the City has concluded will occur if these standards were not imposed. The standards are intended to provide flexibility based upon products available in the market which satisfy the conditions of these design standards. Denial of a permit application which City staff determines is inconsistent with these design standards may be appealed by the applicant to the City Council, pursuant to the procedures and standards set forth in Sections 58-267 and 58-269 of this Article. The City's design standards shall apply in the following geographic areas or environs (hereinafter "designated areas"):
  - (1) Right-of-way contiguous to the frontage of buildings in the City's Downtown Design Review Overlay District as depicted in item C-1 of Appendix C, which is incorporated herein as if fully set forth; and

- (2) Right-of-way contiguous to the frontage and corner side yards located in residential zoning districts only containing street lights; or Above-Ground Service Facilities as described in Section 58-227 of Article V of Chapter 58 of the City Code; and
- (3) Right-of-way contiguous to the frontage of buildings where other utilities such as electric lines and telephone lines are buried and which contain only light poles; and
- (4) The rights-of-way in residential zoning districts where existing utility poles are located contiguous to the rear yards of homes.

(b) Unless granted a variation from the requirements of Sections 58-268 and 58-269 of this Article in accordance with the variation provisions set forth in Section 58-267 of this Article, the following standards shall be met by all occupiers of rights-of-way except franchises in designated areas, including all small wireless providers, from the effective date of this Article.

- (1) All lattice structures are prohibited.
- (2) No new guy wires shall be placed upon an existing utility pole or wireless support structure unless an existing utility pole or wireless support structure has guy wires and the new guy wires are for hardening purposes only.
- (3) No new utility pole or wireless support structure shall be constructed in designated areas unless it is a replacement for an existing utility pole or wireless support structure.
- (4) All antennas and related equipment constructed on non-decorative existing utility poles and wireless support structures shall be a color that will provide the least intrusive visualization as determined by the City Engineer or his designee. The wireless facilities mounted on the utility pole or wireless support structure shall be of the same color as the utility pole or wireless support structure.
- (5) Decorative light poles in designated areas shall be replaced with a new utility pole or wireless support structure of similar design to the replaced existing utility pole or wireless support structure and all antennas shall be hidden within the utility pole or wireless support structure or concealed to the degree reasonably possible to appear like an original part of the utility

pole or wireless support structure. Exemplar photographs of what is acceptable, acceptable with modifications, and not acceptable under the terms of this standard are attached hereto and incorporated herein as item C-2 of Appendix C. In all designated areas, wires serving the wireless facility shall be concealed within or flush mounted to the utility pole or wireless support structure in an enclosed wire chase.

- (6) Top mounted antennas shall be flush to the diameter of the top of the utility pole or wireless support structure. In no event shall the diameter of the top mounted antenna exceed 15 percent (15%) of the diameter of the utility pole or wireless support structure.
- (7) For existing utility poles and wireless support structures in right-of-ways having frontage and in residential areas, side mounted antennas and their enclosures shall be flush mounted to the utility pole or wireless support structure at the level of the antenna attachment.
- (8) In no circumstances shall antennas be mounted less than 12 feet above ground level.
- (9) For streetlight fixtures and traffic control signals, replacement poles and small wireless facilities shall be roughly equal in size to the volume of the street lights, luminaires in bases in the area to achieve a balanced appearance.
- (10) The decorative base of a decorative street light or luminaire shall be between 10 – 25 percent of the pole height.
- (11) The length of arms extending from the base shall be no more than 20 – 25 percent of the utility pole or wireless support structure's height.
- (12) Arms extending from the utility pole or wireless support structure shall be within 20 percent of the total utility pole or wireless support structure height measured from the top of the utility pole or wireless support structure.
- (13) Street light fixtures shall meet AASHTO structural guidelines for roadway applications and ANSI requirements for vibrations.
- (14) Utility pole and wireless support structure height shall be measured from the ground to the top of the utility pole or wireless support structure which shall include antennas built

into or appended to the utility pole or wireless support structure.

- (15) Utility pole and wireless support structure heights shall be consistent with those as authorized by this Article.
- (16) New utility poles and new wireless support structures shall be located where the shared property line between two residential parcels intersects a right-of-way whenever possible, unless such placement would result in an unsafe condition, cluttered appearance, or other violation of this Article..
- (17) New utility poles and new wireless support structures and replacement utility poles and wireless support structures shall be equal distance from other utility poles or wireless support structures based upon the average distance between existing utility poles or wireless support structures within the designated area.

#### **Section 58-270. Exceptions to Applicability.**

Nothing in this Article authorizes a person to collocate small wireless facilities on:

- (a) property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within rights-of-way, or a privately-owned utility pole or wireless support structure without the consent of the property owner;
- (b) property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation, or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
- (c) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Article do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed, and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Article shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain

any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Article.

**Section 58-271. Existing Agreements Grandfathered for Existing Locations.**

Agreements between the City and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted to the City before June 1, 2018, subject to applicable termination provisions contained therein.

**Section 58-272. Annual Recurring Rate.**

A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) \$200 per year, per pole or (ii) the actual, direct, and reasonable costs related to the wireless provider's use of space on the City utility pole. If the City has not billed the licensee actual direct and reasonable costs the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to occupy and on each annual anniversary date thereafter. Late payments shall carry simple interest of six percent (6%) per month, non-prorated.

Rates for collocation on City utility poles located outside of a right-of-way are not subject to these limitations.

**Section 58-273. Aerial Facilities.**

For City utility poles that support aerial facilities used to provide communications services or electric service, wireless providers shall comply with the process for make ready work under 47 U.S.C. 224 and its implementing regulations.

**Section 58-274. Abandonment.**

A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned and the provider of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the City notifying the wireless provider of the abandonment. It shall be the duty of the provider to notify the City in writing when a small wireless facility has not been operating for a continuous period of twelve months. The written notification shall include an explanation of why the operation was halted.

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for authority utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the City if it sells or transfers small wireless facilities within the jurisdiction of the City.

### **Section 58-275. Dispute Resolution.**

After exhaustion of the administrative remedies as provided in this Article, the Circuit Court of Eighteenth Judicial District, DuPage County, Illinois, shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act and this Article. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on City utility poles within the right-of-way, the City shall allow the collocating person to collocate on its utility poles at annual rates of no more than \$200 per year per City utility pole, with rates to be determined upon final resolution of the dispute.

### **Section 58-276. Indemnification.**

A wireless provider shall indemnify and hold the City, its elected and appointed officials, employees, agents and successors, harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of City improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Article and the Small Wireless Facilities Deployment Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents. A wireless provider shall further waive any claims that they may have against the City with respect to actual, consequential, incidental, or special damages, however caused, based on the theory of liability.

### **Section 58-277. Insurance.**

- (a) *Required coverage and limits.* Each wireless provider occupying the right-of-way with a small wireless facility shall secure and maintain the liability insurance policies specified by the City Engineer insuring it as a named insured and naming the City and its elected and appointed officers, elected officials, agents, contractors, and employees as additional non-contributory insureds on the policies. The wireless provider shall provide the City with any and all information necessary to establish coverage including any definitions, limitations or endorsements related to additional insureds. The wireless provider's insurance shall be primary, and any City policies of insurance shall be deemed non-contributory.
- (b) *Copies required.* Each wireless provider shall provide certificates of insurance reflecting the requirements of this section to the City within ten (10) days following receipt of a written request from the City.
- (c) *Maintenance and renewal of required coverage.* The insurance policies required by this section shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the City, by registered mail or certified mail, return receipt requested, of a written notice addressed to the City Manager of such intent to cancel or not to renew."

Within ten (10) days after receipt by the City of said notice, and in no event later than ten (10) days prior to said cancellation, the wireless provider shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this section. In the event that the wireless provider fails to obtain or produce evidence of said replacement insurance, any permits issued pursuant to this Article shall, without further notice, be null and void.

- (d) *Self-insurance.* A wireless provider may self-insure all or a portion of the insurance coverage and limit requirements required by subsection (a) of this section. A wireless provider that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under subsection (a) of this section or the requirements of subsections (b), (c) and (d) of this subsection. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit required under subsection (a) of this section, such as evidence that the wireless provider is a "private self-insurer" under the Illinois Workers' Compensation Act. Self-insurance shall be primary, and any City policies of insurance shall be deemed non-contributory.
- (e) *Effect of insurance and self-insurance on wireless provider's liability.* The legal liability of the wireless provider to the City and any person for any matters that are the subject of insurance policies or self-insurance required by this section shall not be limited by such insurance policies, self-insurance or by the recovery of any amounts therefor.
- (f) A wireless provider shall make certain that all supplements are covered by the insurance required by this section.

**Section 58-278: Change of Ownership, Owner's Identity or Legal Status.**

- (a) *Notification of Change.* A wireless provider shall notify the City no less than 30 days prior to the transfer of ownership of any small wireless facility in the right-of-way or change in identity of the entity of the operator. The new wireless provider shall have all the obligations and privileges enjoyed by the former wireless provider under the permit, if any, and all applicable laws, ordinances, rules and regulations, including this Article, with respect to the work and small wireless facilities in the right-of-way.
- (b) *Transfer of Ownership.* No transfer of ownership for small wireless facilities requiring a license agreement or supplement shall become effective until the purchaser enters into a license agreement with the City.
- (c) *Amended Permit.* A wireless provider shall request that any current permit be amended to show current ownership. If the wireless provider fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the small wireless facility or allows it to remain on the City's right-of-way.

(d) Insurance and Security Fund. Insurance as required herein shall be changed or replaced to reflect the name of the new wireless provider no less than 30 days after a change of ownership, identity or legal status.

**Section 58-279: Effect of Permit.**

(a) Authority granted; no property right or other interest created. A permit from the City licenses a Permittee to undertake only certain activities in accordance with City ordinances to the extent of the City's property rights therein. The permit shall not create a property right or grant authority to the wireless provider to impinge upon the rights of others who may have an interest in the right-of-ways, including, but not limited to, such rights as may exist by virtue of the Illinois Highway Code (605 ILCS 5/9-113).

(b) Compliance with all laws required. The issuance of a permit by the City does not relieve the wireless provider from complying with other requirements of the City Code, and all other applicable statutes, laws, ordinances, rules and regulations.

**SECTION 2:** That if any provision of this ordinance is in conflict with any other ordinance or part of an ordinance, then this ordinance shall control.

**SECTION 3:** That if any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or application of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

**SECTION 4:** That the findings and recitals herein are declared to be *prima facie* evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

**SECTION 5:** That this Ordinance shall be in full force and effect as of its passage, approval, and publication in pamphlet form.

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Mayor

ATTEST

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City Clerk

Roll Call Vote

Ayes:

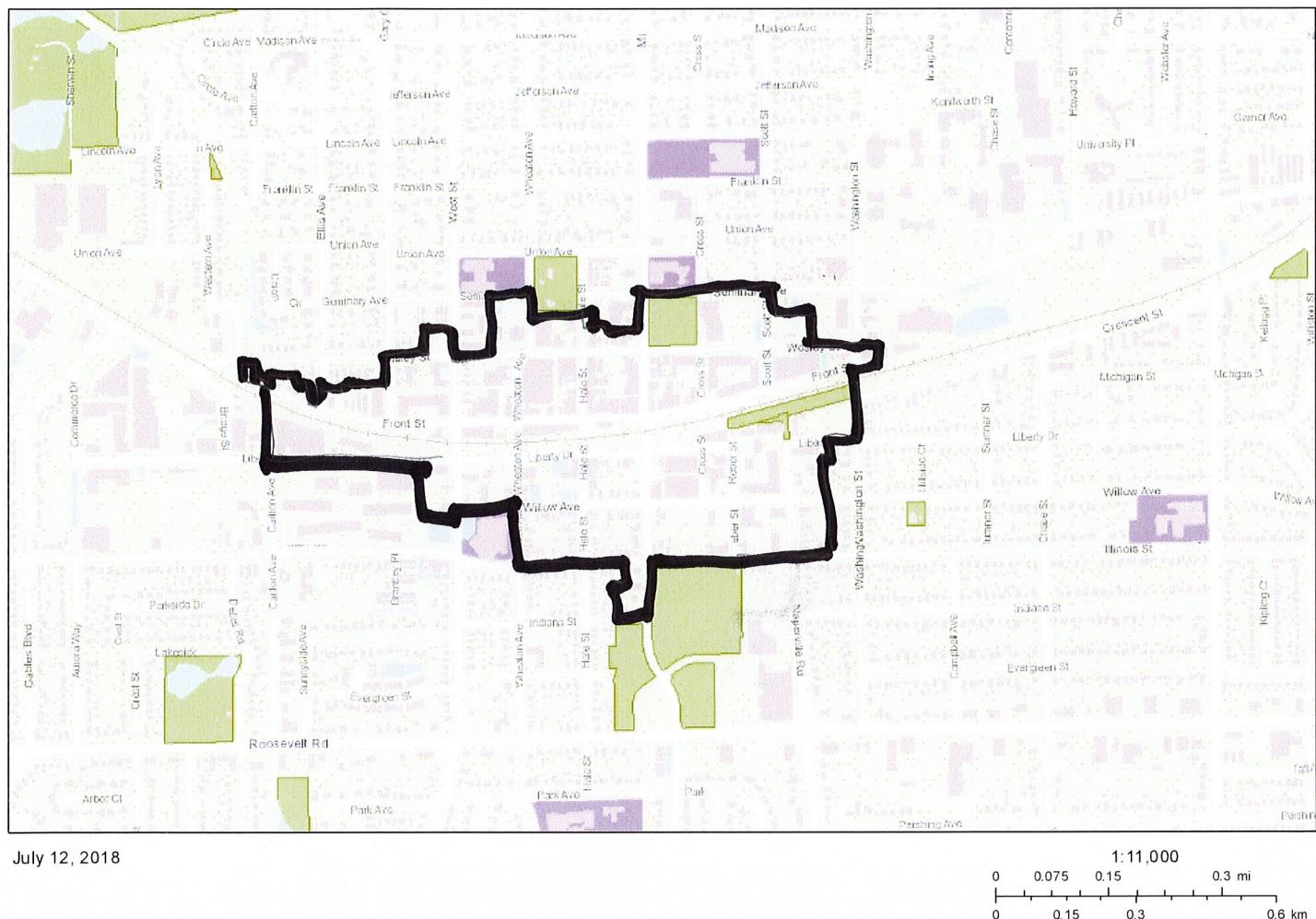
Nays:

Absent:

Passed:

Published:

## Appendix C-1



July 12, 2018

# — Downtown Design Review Overlay District

City of Wheaton GIS

ACCEPTABLE

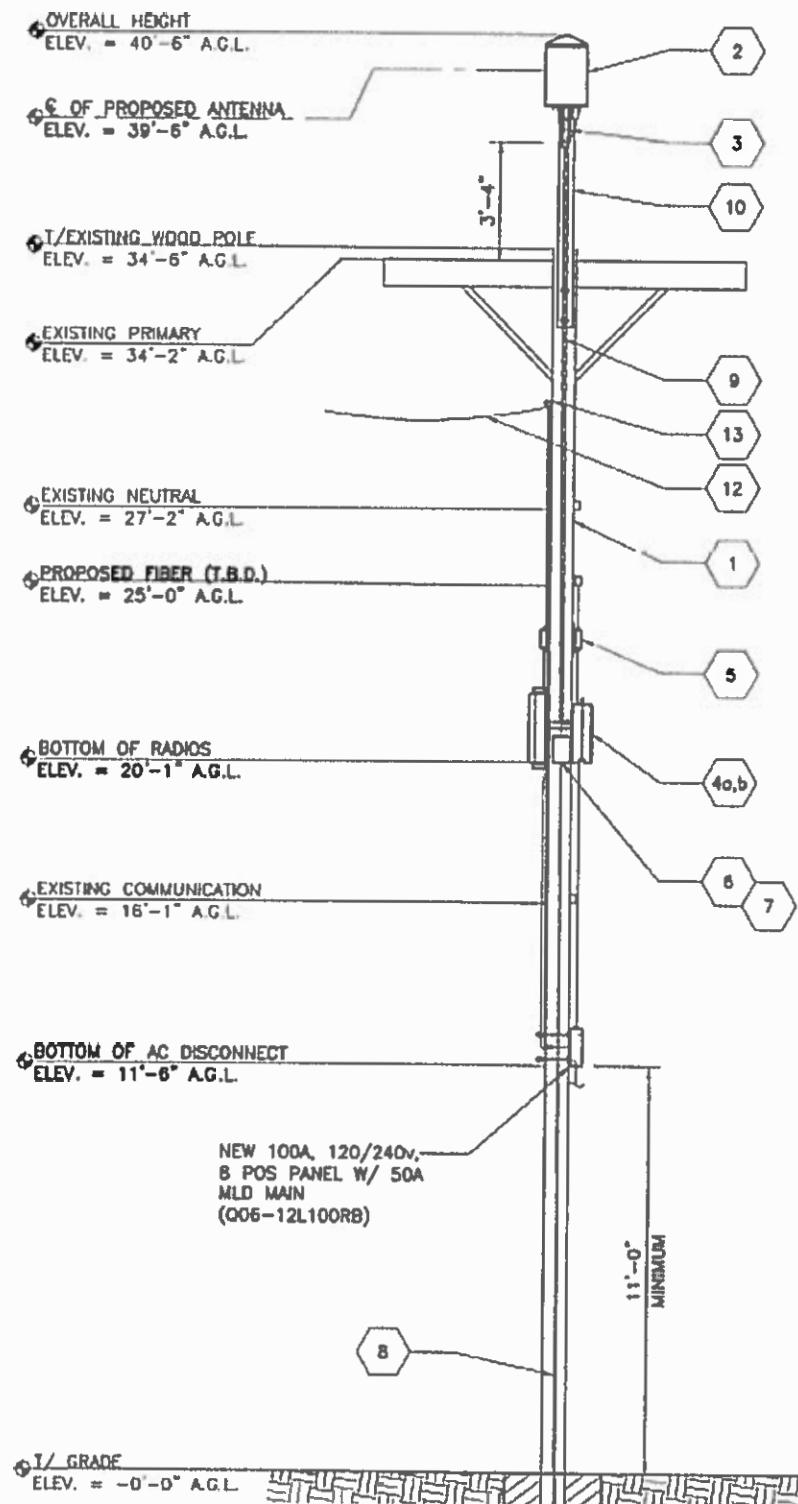
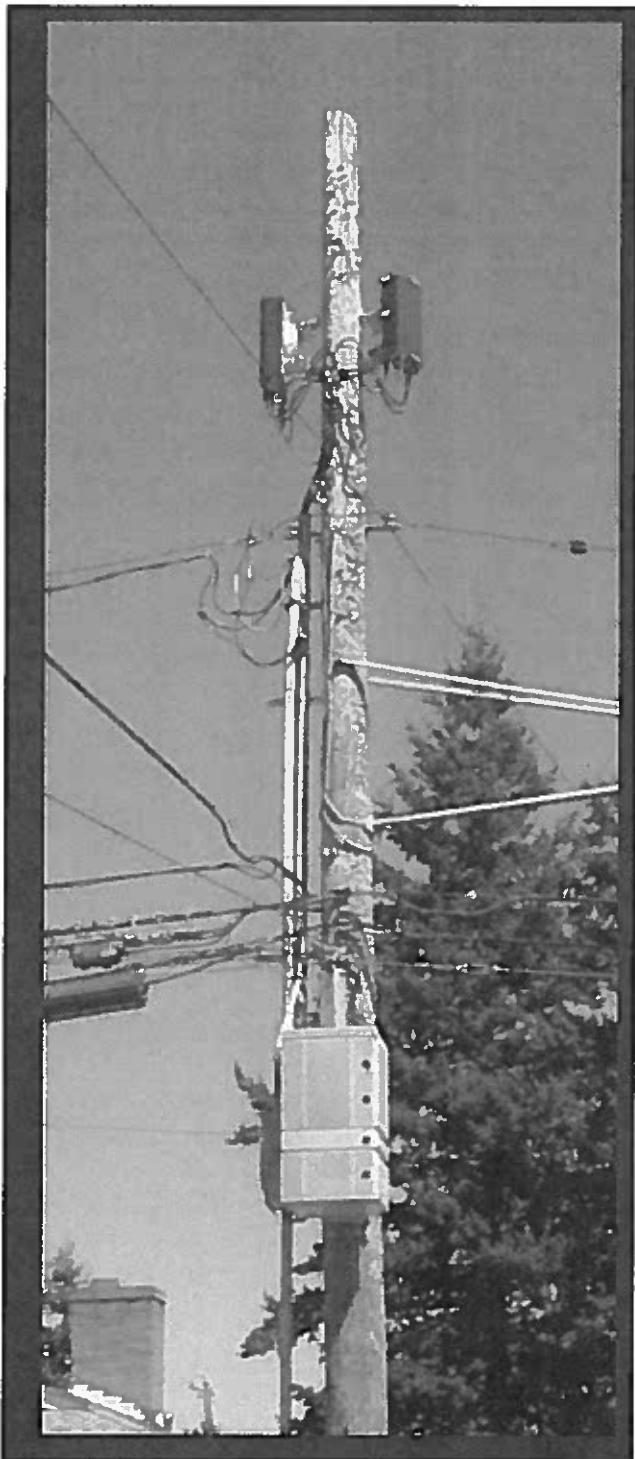


EXHIBIT  
**1**

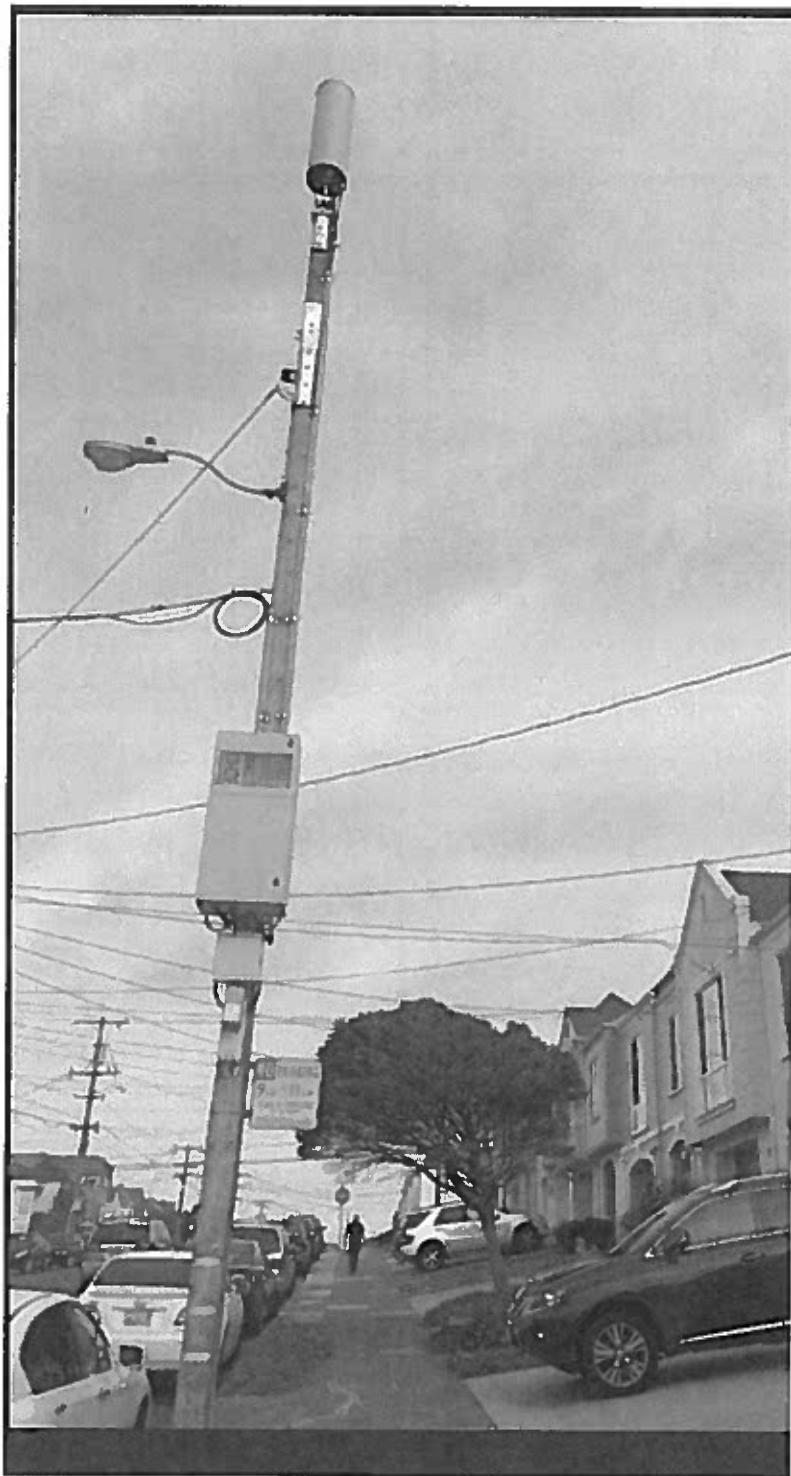
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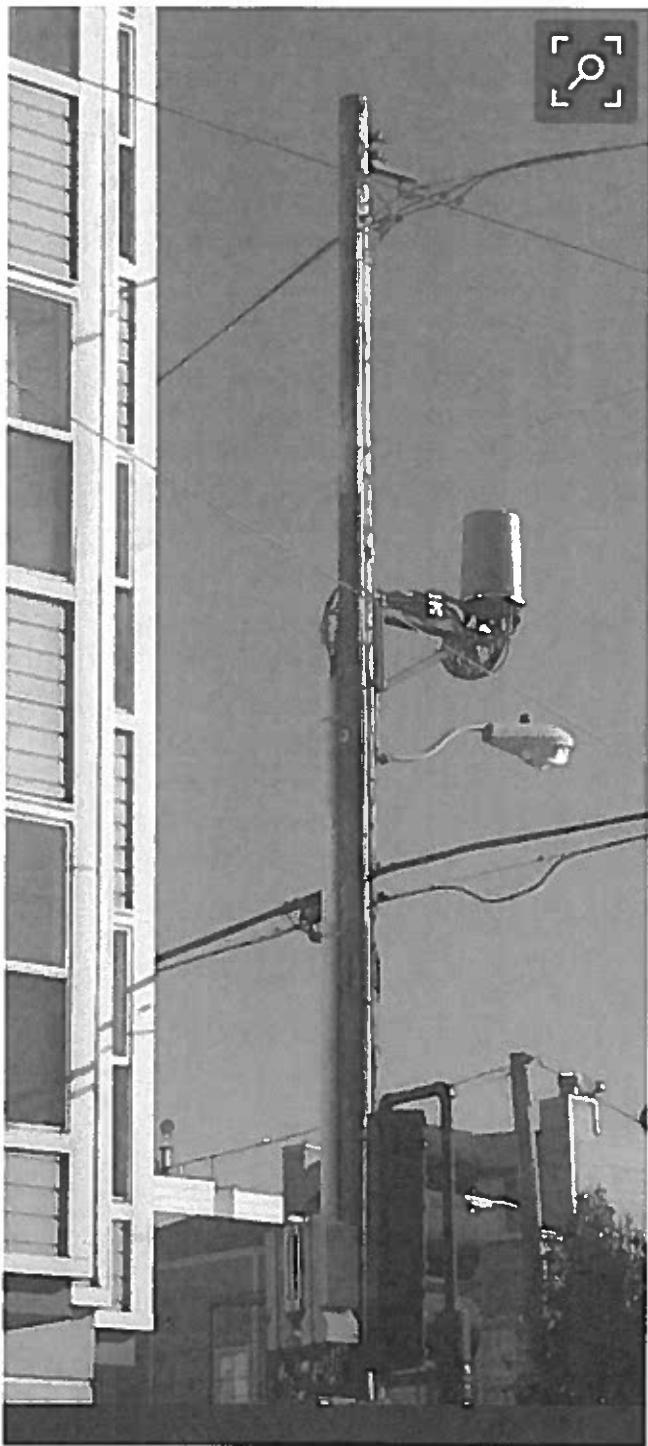
**UNACCEPTABLE**



**ACCEPTABLE**



**UNACCEPTABLE**



**ACCEPTABLE**



Acceptable



EXHIBIT

2

Acceptable



EXHIBITS 1-14

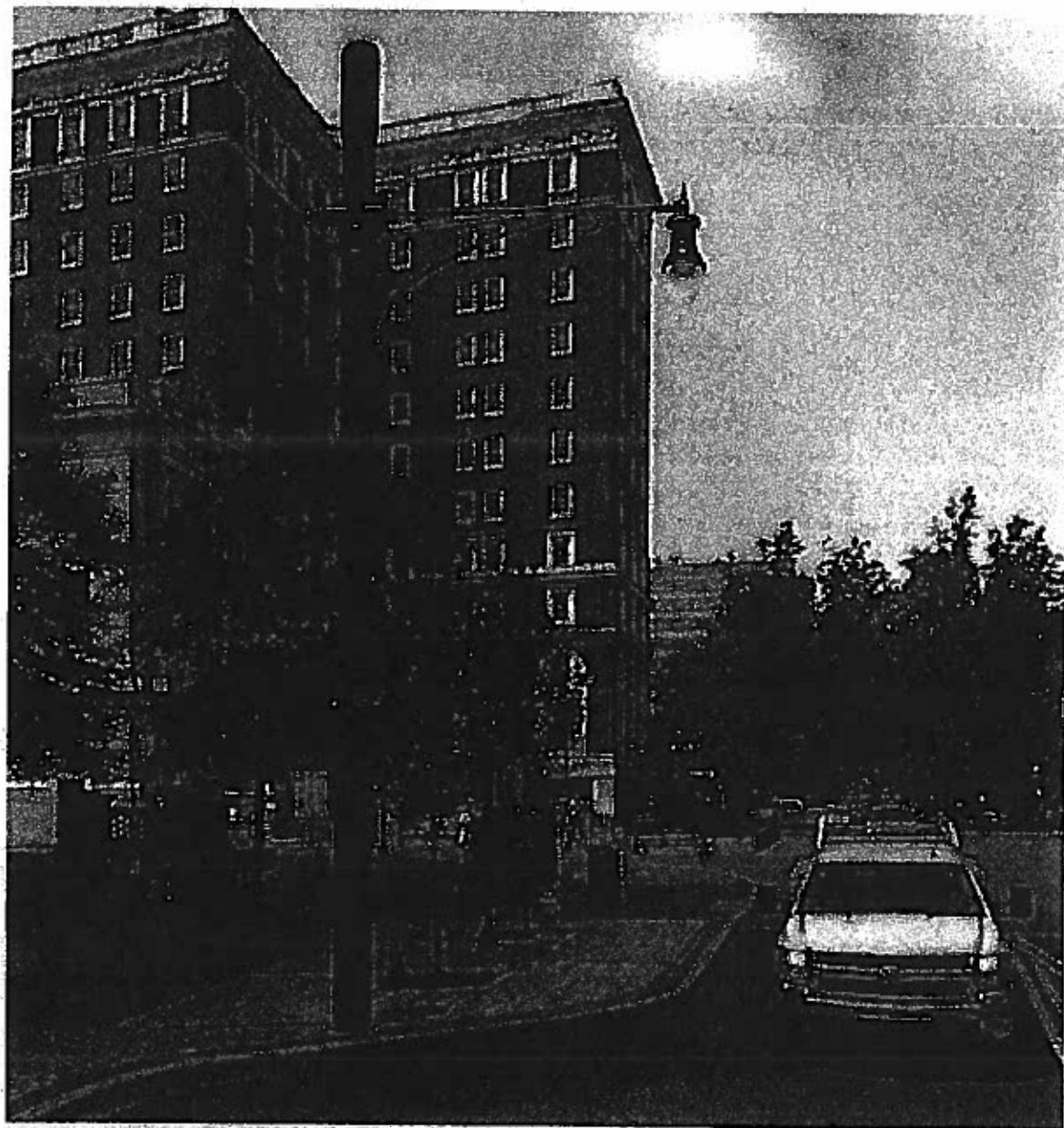


Exhibit 1. Simulated fluted pole to be manufactured by Nepsa with capacity for two internal, collocated wireless antennas. Decorative mast arm and down lighting luminaire by Sternberg Lighting. This ~~would~~ may be an acceptable design, depending on the location context; however, the pole's location, mere inches from the curb, would violate the 8 foot clear space requirement from the curb or edge of pavement.

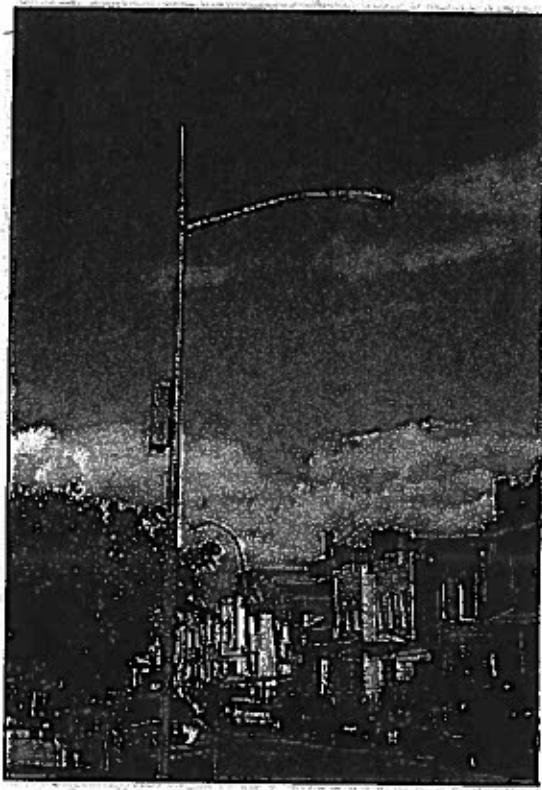


Exhibit 2. The antenna is narrower than, and in scale with the pole. This would be an acceptable design for a cobra-style light fixture.



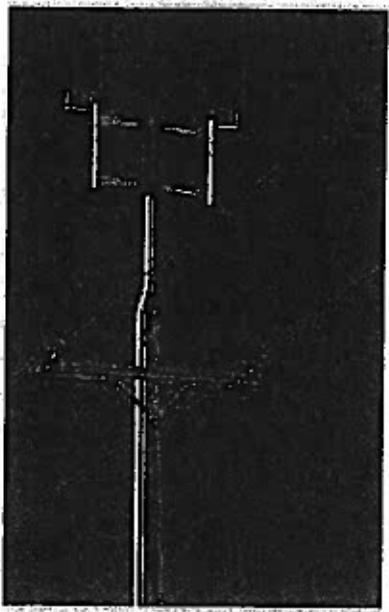
**Exhibit 3. An antenna incorporated into, and hidden in the pole of top mounted, pedestrian scaled light may be acceptable if painted black, featured an acorn luminaire, and otherwise substantially resembled the acorn light fixtures already existing in the City. The photo depicts a Philips pole with internal Ericsson antennas.**



Exhibit 4. The antenna, by Valmont, is painted black to blend-in with the pole and is in scale with the pole base. The arm is within the top 15-20% of the pole height, appearing in balance. This may be an acceptable design depending on the location context and color, which should be consistent with existing poles in the immediate vicinity.



**Exhibit 5. This design may be acceptable if consistent with other fixtures in the immediate vicinity. The base is out of scale to the arms and luminaires. In addition, while symmetrical, the pole and antenna extend far above the luminaires, making the design appear vertically out of proportion. Arms and luminaires should be within the top 20% of the pole height. This design is prohibited; however, a similar design may be acceptable with appropriate modifications.**



**Exhibit 6. Wireless facilities over, or within 20 feet of energized wires are prohibited.**



Exhibit 7. The antenna enclosure has a larger diameter than the pole, rendering it insufficiently cloaked. This design is prohibited.

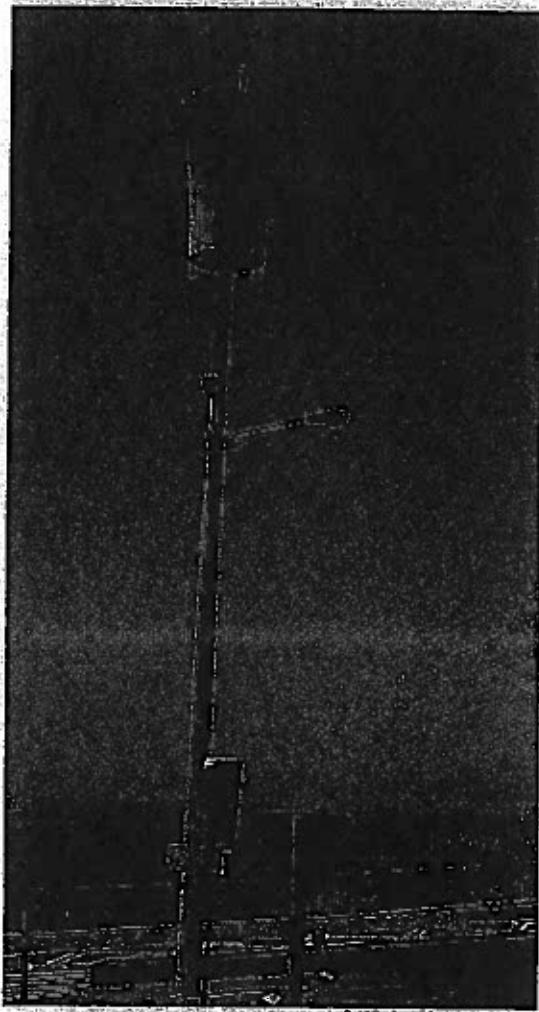


Exhibit 8. The antenna is wider than, and out-of-scale to the pole. This design is prohibited.

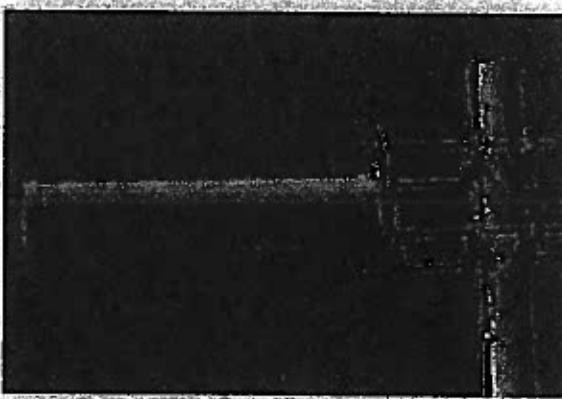


Exhibit 9. The antenna extends horizontally from the pole. This design is prohibited.

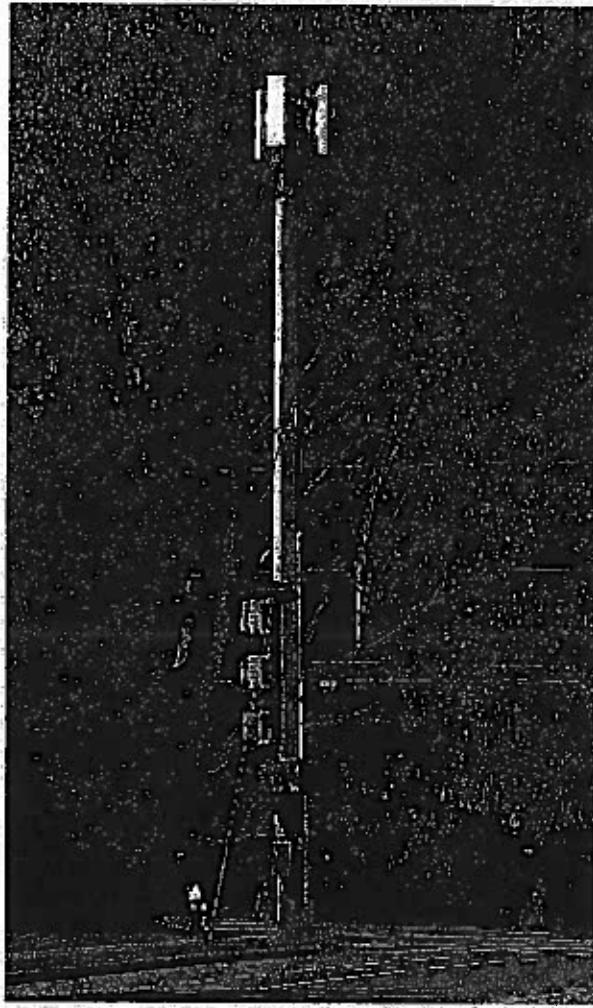
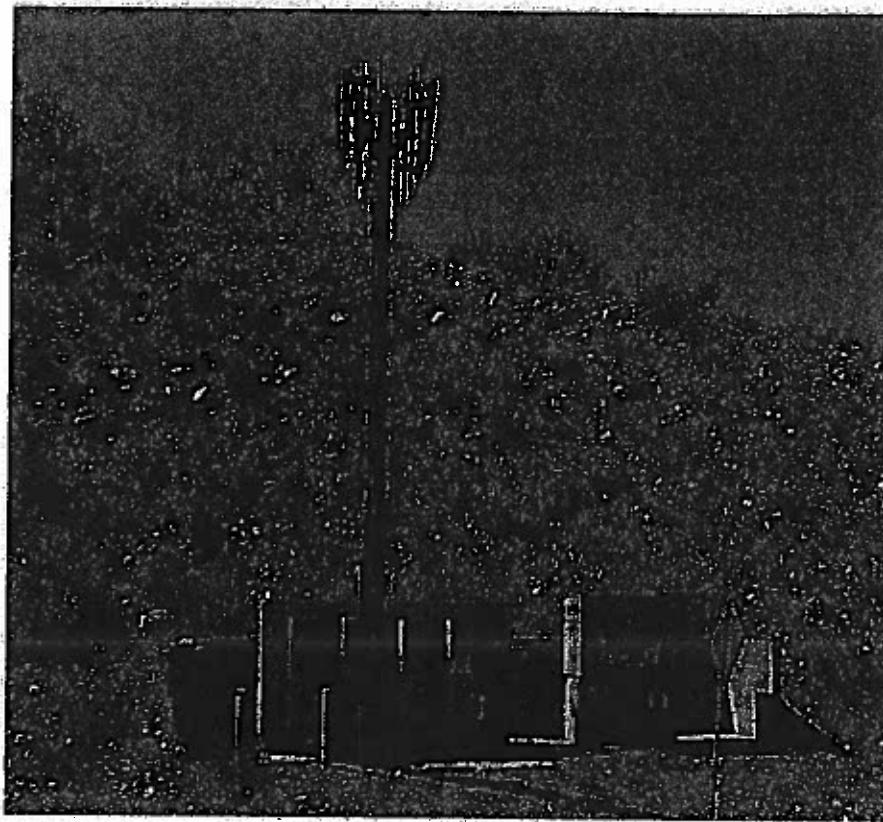


Exhibit 10. Wooden poles are prohibited. In addition, The top-mounted antennas extend on arms away from the pole. This design is prohibited.



**Exhibit 11. Antennas on arms are prohibited.**



Exhibit 12. The pole lacks a base in scale to the volume of the antenna, which is larger than the diameter of the pole and does not appear to be an original part of the pole. This design would be prohibited.

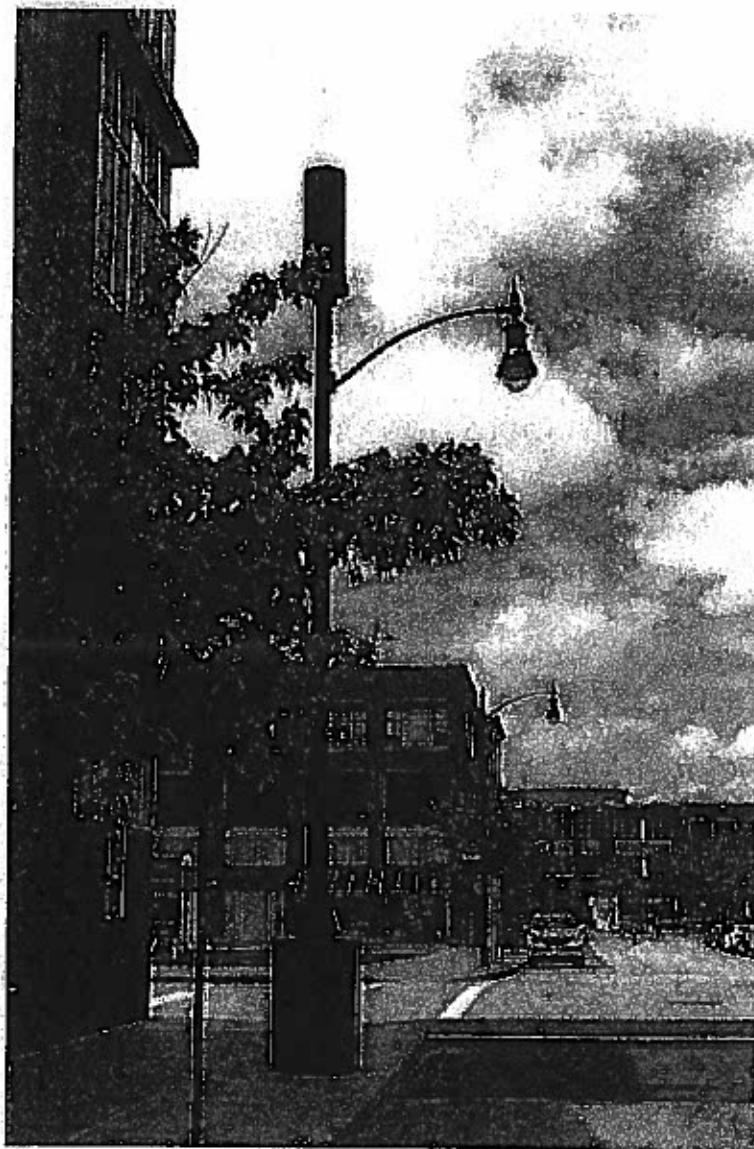
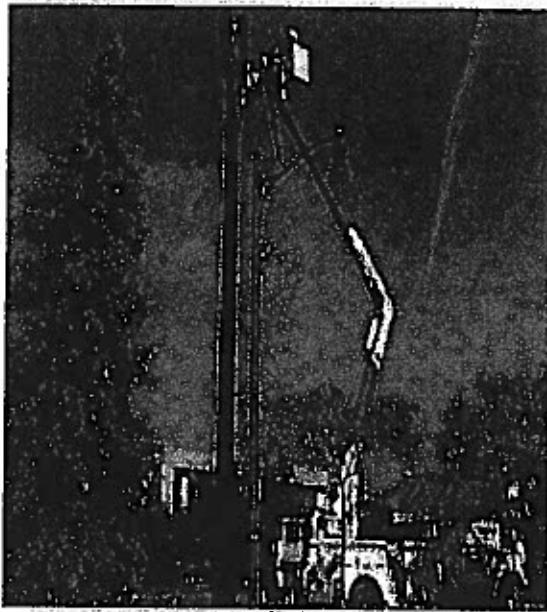


Exhibit 13. The base is out-of-scale to the size of the luminaire. In addition, the antenna is larger than the pole diameter and does not look like an original part of the pole. This design would be prohibited.



**Exhibit 14. The location context for this small cell monopole is not reasonable because it creates a cluttered appearance. In addition, the antenna is larger than the diameter of the pole, lacks of pole base of comparable volume, and is vertically out-of-scale to the existing streetlights.**