

August 2018

MODEL CODE FOR MUNICIPALITIES

National League of Cities

and

National Association of Telecommunications Officers and Advisors

NOTE: WHEN CONSIDERING ADOPTION OF THIS MODEL CODE, LOCAL GOVERNMENTS SHOULD CONSIDER THAT THERE MAY BE FEDERAL, STATE OR LOCAL LAWS THAT COULD LIMIT OR OTHERWISE AFFECT VARIOUS TERMS AND PROVISIONS SET FORTH HEREIN. CIRCUMSTANCES OF EACH LOCAL GOVERNMENT MAY REQUIRE MODIFICATIONS OF THIS MODEL CODE. THE MODEL CODE IS NOT INTENDED TO PROVIDE LEGAL ADVICE AND WE STRONGLY ENCOURAGE LOCALITIES TO CONSULT WITH AN ATTORNEY BEFORE ADOPTION ANY PORTION OF THIS MODEL CODE.

PREAMBLE

Background

On January 31, 2017, Federal Communications Commission Chairman Ajit Pai established a Broadband Deployment Advisory Committee (BDAC), which he tasked with making recommendations to the FCC on ways to accelerate the deployment of broadband by reducing or removing regulatory barriers to infrastructure investment. Among other tasks, Chairman Pai asked the BDAC to draft a model code for municipalities that could assist local governments in enacting ordinances authorizing wireless and wireline broadband deployment in the public rights of way.

In the summer of 2018, the BDAC voted to recommend its model code for municipalities to the FCC. The BDAC model states that it recognizes the “enormous diversity [among local governments] based on geography, size, resources, aesthetics, existing infrastructure, regulatory and legal framework, history, culture, and community priorities” and states its intent to create a “non-binding, flexible guideline.” While we agree with these statements and appreciate the hard work of the BDAC members, we believe local governments could benefit from an alternative model code that reflects the range of legal and policy options open to municipalities.

NLC and NATOA’s Alternative Model Code

There is no single model code that will work for every jurisdiction. As such, NLC and NATOA’s model code is intended as a roadmap to assist local governments in adopting their own ordinances governing use of the rights of way by communications providers. While example language is included in some sections, we do not intend to suggest these examples could work for every jurisdiction.

We also recognize there are many ways to structure an ordinance authorizing use of the rights of way by wireless and wireline communications providers. The appropriate structure will vary by jurisdiction. For purposes of this model code, we opted to use a similar approach as the BDACs model code to provide an opportunity to compare and contrast the two models. Thus, the general concept of this model, like the BDAC model, is to:

- (1) Outline the mechanism for authorizing use of the rights of way by wireless and wireline communications providers (e.g., franchise agreements, right of way use agreements, licenses, etc.);
- (2) Provide a mechanism for administrative approval of deployments that meet specific criteria, which will allow for faster deployment of certain facilities where discretionary review and/or public hearings are unnecessary; and
- (3) Establish the requirements for working in the rights of way to install communications facilities.

The model is intended to provide a general framework and thus is drafted as an outline of provisions jurisdictions may want to include in their final ordinance. In many cases example language is provided to help illustrate the issues to be addressed and, in some cases, to provide an alternative to similar language found in the BDAC model. However, the intent is to allow each jurisdiction to draft the substantive provisions that best reflect local needs and interests.

Note that the NLC/NATOA model code does not authorize attachments to poles or structures in the rights of way, which involves considerations, such as make-ready work and attachment fees, that have not been addressed in this model. We recommend that jurisdictions that own poles or other structures in the rights of way establish a clear process for authorizing attachments to those structures, which may be incorporated into this code or established as a stand-alone process.

Finally, please note that this model is not intended to, and does not, address or reflect state and local laws or any limitations on local authority. The circumstances of each municipality may, and likely will, require modifications to the framework and/or example language of this model code. The model code is not intended to provide legal advice and we strongly encourage municipalities to consult with an attorney before adopting any portion of this model code.

Additional Considerations

As described above, NLC and NATOA followed the general framework of the BDAC model code, which applies only to wireless and wireline communications providers, including cable operators, telecommunications providers and information services providers. Municipalities should review their existing ordinances and policies to determine if this framework is appropriate. Municipalities may want to consider whether it would be preferable to adopt a utility-neutral ordinance covering all utilities and communications providers, which would provide one set of “rules” for use of the public rights of way. Differences in state laws, local authority and policy choices, existing ordinances and rights of way agreements, among other things, may impact the decision in how to proceed.

Understanding the Organization of the Model Code

As stated above, the model code is best described as an outline or roadmap to assist municipalities in drafting the appropriate ordinance for their community. Most sections of the model code begin with an overview of the purpose of the Section. This explanation is bracketed and in ALL CAPS, and is intended as guidance for municipal drafters, not for adoption in a final ordinance.

Most subsections include a general explanation of the type of provision a municipality may wish to include in its ordinance, which is intended as guidance rather than proposed language for adoption in a final ordinance. These instructions generally are at the beginning of a subsection and are in plain text.

In some sections, the model code includes example language to illustrate the intent of the section. The example language, or a variation thereof, may be appropriate for adoption in a final ordinance in some jurisdictions. Example language is in *italics*.

Finally, there may be additional notes or issues for consideration within the subsections of the model code, which are bracketed and in ALL CAPS. Again, these notes are intended as guidance for municipal drafters, not for adoption in a final ordinance.

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Article I. Title and Definitions

Section 1.1 Title

[INSERT APPROPRIATE TITLE FOR THIS CHAPTER]

Section 1.2 Definitions. [THE FOLLOWING DEFINITIONS ARE EXAMPLES ONLY; JURISDICTIONS SHOULD ADOPT DEFINITIONS THAT REFLECT STATE LAW AND LOCAL AUTHORITY AND POLICIES.]

- a. ***“Administrative Review”*** means ministerial review of an Application by the Authority relating to the review and issuance of a Permit, including review by the [insert appropriate staff and designee, if desired] to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter.
- b. ***“Antenna”*** means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- c. ***“Applicable Codes”*** means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Authority, including any amendments adopted by the Authority, or otherwise are applicable in the jurisdiction.
- d. ***“Applicant”*** means any Person who submits an Application under this Chapter.
- e. ***“Application”*** means a written request, on a form provided by the Authority, for a Permit. [IF THE JURISDICTION DOES NOT HAVE A PERMIT FORM, DELETE “ON A FORM PROVIDED BY THE AUTHORITY” IN THE DEFINITION.]
- f. ***“Authority”*** means the [city/town/etc of _____] or any agency, subdivision or any instrumentality thereof. [THIS MODEL USES THE TERM “AUTHORITY” FROM THE BDAC MODEL. JURISDICTIONS SHOULD CONSIDER USING THE TERM FOR THE CITY/TOWN/ETC. THAT IS CONSISTENT WITH OTHER PROVISIONS OF THEIR CODE.]
- g. ***“Collocate”*** means to install or mount a Small Wireless Facility in the Public ROW on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the Application. “Collocation” has a corresponding meaning.
- h. ***“Communications Facility”*** means, collectively, the equipment at a fixed location or locations within the Public ROW that enables Communications Services, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.

- i. ***“Communications Service”*** means cable service, as defined in 47 U.S.C. § 522(6); information service, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53). [CONSIDER REVISING THIS DEFINITION TO REFER TO “BROADBAND” RATHER THAN “INFORMATION SERVICES,” OR OTHERWISE ESTABLISH THAT AN INTERNET PROVIDER MUST PROVIDE CERTAIN MINIMUM SPEEDS TO BE ELIGIBLE TO FILE AN APPLICATION UNDER THIS CHAPTER.]
- j. ***“Communications Service Provider”*** means a provider of Communications Services and includes a cable operator, as defined in 47 U.S.C. § 522(5).
- k. ***“Decorative Pole”*** means a Pole that is specially designed and placed for aesthetic purposes.
- l. ***“Discretionary Review”*** means review of an Application by the Authority relating to the review and issuance of a Permit that is other than an Administrative Review.
- m. ***“Eligible Facilities Request”*** means an eligible facilities request as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time.
- n. ***“FCC”*** means the Federal Communications Commission of the United States.
- o. ***“Laws”*** means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- p. ***“Ordinary Maintenance and Repair”*** means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower, that does not require blocking, damaging or disturbing any portion of the Public ROW. [NOTE THAT THIS TERM IS USED IN SECTION 2.2.d, WHICH EXEMPTS ORDINARY MAINTENANCE AND REPAIR FROM THE PERMIT REQUIREMENT. THIS DEFINITION SHOULD BE REFINED TO REFLECT THE TYPE OF WORK IN THE ROW THE MUNICIPALITY WILL ALLOW WITHOUT A PERMIT. ALTERNATIVELY, THIS DEFINITION AND SECTION 2.2.d MAY BE DELETED IF THE JURISDICTION’S POLICY IS TO REQUIRE A PERMIT FOR ALL WORK IN THE ROW.]
- q. ***“Permit”*** means a written authorization (in electronic or hard copy format) to install, at a specified location(s) in the Public ROW, a Communications Facility, Tower or a Pole to support a Communications Facility.
- r. ***“Permittee”*** means an Applicant that has received a Permit under this Chapter.
- s. ***“Person”*** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.
- t. ***“Pole”*** means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right of Way. A Pole does not include a Tower or Support

Structure and does not include a pole or structure that supports electric transmission lines.

- u. **“Provider”** means a Communications Service Provider or a Wireless Services Provider, and includes any Person that owns and/or operates within the Public ROW any Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers.
- v. **“Public Right of Way” or “Public ROW”** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Chapter shall include Public Utility Easements, but only to the extent the Authority has the authority to permit use of the area or Public Utility Easement for Communications Facilities or Poles, Towers and Support Structures that support Communications Facilities. The term does not include a federal interstate highway or other areas that are not within the legal jurisdiction, ownership or control of the Authority.
- w. **“Public Utility Easement”** means, unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities. Public Utility Easement does not include an easement dedicated solely for Authority use, or where the proposed use by the Provider is inconsistent with the terms of any easement granted to the Authority.
- x. **“Replace” or “Replacement”** means, in connection with an existing Pole, Support Structure or Tower, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this Chapter and any other applicable Authority [charter/code regulations], in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.
- y. **“Small Wireless Facility”** means a Wireless Facility that meets both of the following qualifications: (i) each Antenna could fit within an enclosure of no more than ____ () cubic feet in volume; and (ii) all other wireless equipment associated with the Antenna, including the Provider’s preexisting equipment, is cumulatively no more than _____ () cubic feet in volume. [THIS DEFINITION IS A MODIFICATION OF THE BDAC MODEL DEFINITION. JURISDICTIONS SHOULD CONSIDER WHETHER ANOTHER DEFINITION WOULD BE MORE APPROPRIATE, SUCH AS AN OVERALL VOLUME LIMIT (NOT ONE LIMIT FOR ANTENNAS AND ONE FOR OTHER EQUIPMENT) OR OTHER MEASURES OF SIZE LIMITS. NOTE THAT THE VOLUME LIMITS LEAVE ROOM FOR DIFFERENT SHAPES (E.G., VERY TALL AND THIN) THAT MAY NOT BE DESIRABLE. IF THIS IS A CONCERN, THIS DEFINITION SHOULD BE REVISED OR IT SHOULD BE ADDRESSED THROUGH THE DESIGN STANDARDS IN THIS CHAPTER. NOTE ALSO THAT THE BDAC MODEL AND SOME STATE LAWS EXCLUDE CERTAIN EQUIPMENT FROM THE VOLUME CALCULATION, WHICH SOME JURISDICTIONS MAY WANT TO INCORPORATE IN THIS DEFINITION IF APPROPRIATE.]
- z. **“State”** means the [State/Commonwealth] of _____.

- aa. **“Support Structure”** means a structure in the Public ROW other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.
- bb. **“Tower”** means any structure in the Public ROW built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.
- cc. **“Wireless Facility”** means the equipment at a fixed location or locations in the Public ROW that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility.
- dd. **“Wireless Services”** means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.
- ee. **“Wireless Services Provider”** means a Person who provides Wireless Services.

Article II. Governance of Deployment in the Public ROW

Section 2.1 Access to Public ROW [THIS SECTION REQUIRES A FRANCHISE, ROW AGREEMENT, LICENSE OR OTHER AUTHORIZATION FOR USE OF THE PUBLIC ROW. THIS SECTION SHOULD BE ADJUSTED WHERE A MUNICIPALITY DOES NOT HAVE AUTHORITY TO REQUIRE A FRANCHISE/AGREEMENT/LICENSE. THIS SECTION MAY INCLUDE THE TERMS AND CONDITIONS FOR USE OF THE ROW OR IT MAY SIMPLY STATE THAT A NEGOTIATED FRANCHISE/ROW USE AGREEMENT IS REQUIRED. NOTE THAT THIS CODE DOES NOT ADDRESS AUTHORITY TO ATTACH TO AUTHORITY-OWNED POLES OR STRUCTURES IN THE ROW. THIS CODE SHOULD STATE THAT A SEPARATE ATTACHMENT AGREEMENT IS REQUIRED (OR, ALTERNATIVELY, THAT ATTACHMENT TO AUTHORITY-OWNED POLES WILL BE INCLUDED IN THE ROW USE FRANCHISE/AGREEMENT, IF THAT IS THE PREFERENCE).]

- a. Agreement. State that an agreement is required to authorize installation of Communications Facilities in the Public ROW. [For example: “Prior to installing in the Public ROW any Communications Facility, or any Pole built for the sole or primary purpose of supporting a Communications Facility, or any Tower, a Person shall enter into a [Right of Way Agreement; Franchise Agreement; License Agreement] with the Authority expressly authorizing use of the Public Right of Way for the Communications Facility, Pole or Tower proposed to be installed.”]
- (i) General Terms [THE FOLLOWING IS A SUGGESTED LIST OF GENERAL PROVISIONS THAT COULD BE INCORPORATED INTO FRANCHISES OR OTHER ROW USE AGREEMENTS, AGREED TO AS PART OF ROW LICENSE OR OTHERWISE REQUIRED OF ALL PROVIDERS.]
 - (A) Include the maximum term of the agreement, including any renewals, and the bases for termination. [CONSIDER

FOLLOWING SIMILAR PROVISIONS OF EXISTING ROW ORDINANCES OR AGREEMENTS.]

- (B) State the scope of authority granted in the franchise/agreement/license. [For example: *“The [franchise/agreement/license] authorizes the Provider’s non-exclusive use of the Public ROW for the sole purpose of installing, maintaining and operating Communications Facilities, including any Pole built for the sole or primary purpose of supporting the Communications Facilities and any Tower, to provide the services expressly authorized in the [franchise/agreement/license], subject to applicable Laws, this Chapter and the terms and conditions of the [franchise/agreement/license]. The [franchise/agreement/license] authorizes use only of the Public ROW in which the Authority has an actual interest. It is not a warranty of title or interest in any Public ROW and it does not confer on the Provider any interest in any particular location within the Public ROW. No other right or authority is granted except as expressly set forth in the [franchise/agreement/license]. Nothing herein shall authorize the use of the Authority’s Poles, Towers, Support Structures, or other structures in the Public ROW. All use of Authority Poles, Towers, Support Structures, and other structures in the Public ROW shall require a separate agreement, and the payment of separate fees for such use.”*
 - (C) Include general maintenance obligations. [For example: *“The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public ROW in a safe condition, and in good order and repair.”*]
 - (D) Include specific indemnification and insurance requirements. [CONSIDER FOLLOWING SIMILAR PROVISIONS OF EXISTING ROW ORDINANCES OR AGREEMENTS.]
 - (E) Emergency contacts and required response to emergencies related to facilities. [CONSIDER FOLLOWING SIMILAR PROVISIONS OF EXISTING ROW ORDINANCES OR AGREEMENTS.]
 - (F) Assignment and sublicensing. [For example: *“Lessees or licensees using space in ducts, conduits and on Poles must comply with the terms of this [agreement/Chapter], unless expressly exempted by the Authority.”*]
 - (G) Include the Authority’s right to access books and records, including audit rights. [CONSIDER FOLLOWING SIMILAR PROVISIONS OF EXISTING ROW ORDINANCES OR AGREEMENTS.]
- (ii) Public ROW Construction and Installation Requirements. [CONSIDER INSERTING REFERENCE TO EXISTING ROW CONSTRUCTION REQUIREMENTS; IF NO REQUIREMENTS EXIST, CONSIDER ADDING

STANDARDS APPLICABLE TO ALL ROW USERS (I.E., ALL UTILITIES, CABLE, TELECOMS, ETC.) TO THE APPROPRIATE CHAPTER OF THE CODE OR DEVELOPING STANDARDS TO INSERT IN THIS SECTION. THE FOLLOWING IS A SUGGESTED LIST OF PROVISIONS TO ADDRESS:]

(A) ROW Permit.

1. State that permits are required. [For example: *“Unless expressly authorized in this Chapter or in writing by the Authority, no Person may construct, maintain or perform any other work in the Public ROW related to Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers without first receiving a Permit to the extent required under this Chapter, and any other permit or authorization required by applicable Laws.”*] [CONSIDER ADDING A CROSS-REFERENCE TO ANY OTHER PERMITS THAT MAY BE REQUIRED, SUCH AS A STREET OPENING PERMIT, ELECTRICAL PERMIT, ETC.]
2. State that permits will not be issued unless the Provider has a franchise/agreement/license, if required, and has paid all applicable fees. [For example: *“The Authority shall not issue a Permit unless the Applicant, or a Provider on whose behalf the Applicant is constructing Communications Facilities, Poles or Towers, has applied for and received the [franchise/agreement/license] required by this Chapter, or otherwise has a current and valid franchise with the Authority expressly authorizing use of the Public ROW for the Communications Facilities, Poles or Towers proposed in the Application, and all applicable fees have been paid.”*]

(B) Location of New Facilities.

1. Include general non-interference language. [For example: *“The Provider shall not locate or maintain its Communications Facilities, Poles and Towers so as to unreasonably interfere with the use of the Public ROW by the Authority, by the general public or by other persons authorized to use or be present in or upon the Public ROW.”*]
2. Describe the required location and requirements for above-ground placement of new poles and equipment cabinets (e.g., distance from curb/sidewalk/lot lines; line of sight for traffic; labeling requirements; noise limits; etc.). Consider cross-referencing the design standards described below where the standards impact location of facilities.
3. State when new facilities must be placed underground; consider the circumstances in which wireless facilities may

remain above-ground in the ROW even where other facilities are underground. [For example: *“Unless otherwise agreed to in writing by the Authority or otherwise required by applicable Laws, whenever any existing electric utilities or Communications Facilities are located underground within a Public ROW, the Provider with permission to occupy the same portion of the Public ROW shall locate its Communications Facilities underground at its own expense. The Authority may, in its sole discretion, approve above-ground placement of equipment cabinets, pedestals and similar equipment. For facilities or equipment such as Wireless Facilities that cannot, by their nature, operate unless located above-ground, the Provider and Authority shall work to find a suitable location for such facilities or equipment, which may be outside the Public ROW.”*]

(C) Construction Standards.

1. Require the Provider and its contractors to comply with applicable safety requirements, permits, traffic control requirements, etc. Refer to or incorporate existing ROW construction standards. [For example: *“In performing any work in or affecting the Public ROW, the Provider, and any agent or contractor of the Provider, shall comply with the provisions of Section 2.5 of this Chapter and all other applicable Laws, including [INSERT CROSS REFERENCE TO OTHER APPLICABLE AUTHORITY CODES, IF ANY].”*]

(D) Restoration Requirements.

1. Require the Provider and its contractors to comply with applicable restoration requirements. Refer to or incorporate existing ROW construction standards. [For example: *“The Provider, or its agent or contractor, shall restore, repair and/or replace any portion of the Public ROW that is damaged or disturbed by the Provider’s Communications Facilities, Poles, Towers or work in or adjacent to the Public ROW as required in Section 2.5 of this Chapter and all other applicable Laws, including [INSERT CROSS REFERENCE TO OTHER APPLICABLE AUTHORITY CODES, IF ANY].”*].
2. Include authority of the municipality to complete the restoration, at provider’s cost, if the provider fails to do so. [For example: *“If the Provider fails to timely restore, repair or replace the Public ROW as required in this subsection, the Authority or its contractor may do so and the Provider shall pay the Authority’s costs and expenses in completing the restoration, repair or replacement.”*]

(E) Removal, Relocation and Abandonment.

1. Describe the requirement to relocate or remove facilities consistent with state law and local policies. Include the timeline to complete relocation/removal. [For example: *“Within ____ (____) days following written notice from the Authority, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles, Support Structures or Towers within the Public ROW, including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Chapter), whenever the Authority has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Authority [OR public OR governmental body] improvement, the operations of the Authority [OR public OR governmental body] in, under or upon the Public ROW, or otherwise is in the public interest. The Provider shall be responsible to the Authority for any damages or penalties it may incur as a result of the Provider’s failure to remove or relocate Communications Facilities, Poles, Support Structures or Towers as required in this subsection.”*]
2. Include relocation/removal authority of the municipality in the event of an emergency. [For example: *“The Authority retains the right and privilege to cut or move any Communications Facility, Pole, Support Structure or Tower located within the Public ROW of the Authority, as the Authority may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Authority shall notify the Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole, Support Structure or Tower. In all cases the Authority shall notify the Provider after cutting or removing the Communications Facility, Pole, Support Structure or Tower as promptly as reasonably possible.”*]
3. Address the providers’ obligations relative to abandoned facilities. Include a timeline for removal and restoration; consider whether to allow facilities to be abandoned in place and whether the provider will remain responsible for abandoned facilities or if the municipality may choose to take ownership. [For example: *“A Provider shall notify the Authority of abandonment of any Communications Facility, Pole, Support Structure or Tower at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to*

abandonment. Following receipt of such notice, the Provider shall remove its Communications Facility, Pole, Support Structure or Tower at the Provider's own expense, unless the Authority determines, in its sole discretion, that the Communications Facility, Pole, Support Structure or Tower may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles, Support Structures and Towers until they are removed from the Public ROW unless the Authority agrees in writing to take ownership of the abandoned Communications Facilities, Poles, Support Structures or Towers.”]

4. Include authority of the municipality to complete the relocation/removal, at provider's cost, if the provider fails to do so. [For example: *“If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles, Support Structures or Towers or remove any of its abandoned Communications Facilities, Poles, Support Structures or Towers as required in this subsection, the Authority or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Authority incurs arising from the delay.”*]

(F) As-builts and Maps.

1. Require maps showing location of equipment in ROW and as-builts after construction; specify, if desired, the required format for maps. [CONSIDER INCLUDING OR REFERENCING SIMILAR PROVISIONS OF EXISTING ROW ORDINANCES OR AGREEMENTS.]

(G) [CONSIDER ADDING OTHER DESIRED ROW CONSTRUCTION-RELATED REQUIREMENTS, SUCH AS “DIG ONCE” REQUIREMENTS/INSTALLATION OF EXCESS CONDUIT FOR THE AUTHORITY AT INCREMENTAL COST.]

b. Fees and Charges. [INSERT EXISTING APPLICABLE FEES AND CHARGES OR ESTABLISH NEW FEES AND CHARGES. BELOW ARE EXAMPLES OF POSSIBLE FEES AND CHARGES:]

- (i) **Permit Application Fee.** Insert the appropriate fee for each Permit Application submitted under this Chapter. [For example: *“Every Applicant shall pay a Permit application fee of [\$___] for each Application. The fee shall be paid upon submission of the Application.”*] [CONSIDER ALLOWING BATCH PERMITS WITH LOWER FEES FOR SUBSEQUENT PERMITS. FOR EXAMPLE: *“Every Applicant shall pay a Permit application fee of [\$___] for a single Application, and [\$___] for multiple Applications of up to [insert number] Applications submitted simultaneously by a*

Provider pursuant to Section 2.2.i.” “The fee shall be paid upon submission of the Application(s).”]

- (ii) **Agreement/License Application Fee.** Insert the appropriate fee for reviewing and issuing the ROW franchise/agreement/license required under this Chapter. [For example: *“Every Person requesting a [Right of Way Agreement; Franchise Agreement; License Agreement] from the Authority shall pay an application fee of [\$____], which shall be paid upon submission of the [Right of Way Agreement; Franchise Agreement; License Agreement] application.”*]
- (iii) **ROW Use Fee.** Insert the appropriate fee to be paid for use of the Public ROW. [For example: *“In exchange for the privilege of non-exclusive occupancy of the Public ROW, the Provider shall pay the Authority [[\$____] per installation or other calculation] (the “ROW Use Fee”). The ROW Use Fee shall be due and payable within thirty (30) days of [issuance of the [Right of Way Agreement; Franchise Agreement; License]] [issuance of the applicable Permit(s) required under this Chapter] and [annually/quarterly/monthly] thereafter. Late payments shall be subject to interest at a rate of [____] [and a penalty of ____].”*] [IF THERE IS NO AGREEMENT OR LICENSE FOR USE OF THE ROW, CONSIDER INCLUDING AUDIT RIGHTS IN THIS SECTION. NOTE THAT THIS CODE DOES NOT ADDRESS ATTACHMENT FEES FOR ATTACHING TO AUTHORITY POLES OR STRUCTURES IN THE ROW. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY ATTACHMENT FEES SHOULD BE ADDRESSED ELSEWHERE OR, IF REQUIRED OR PREFERRED, INCORPORATED IN THIS CODE ALONG WITH OTHER PROVISIONS UNIQUE TO ATTACHMENTS (E.G., MAKE READY AND RELOCATION OF EXISTING ATTACHMENTS).]
- (iv) **Other Fees.** State that other fees may apply. [For example: *“The Applicant or Provider shall be subject to any other generally applicable fees of the Authority or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable Laws, as well as attachment fees for the use of Authority owned Poles, Towers, Support Structures, ducts, conduits or other structures in the Public ROW, as set forth in attachment agreements authorizing such use.”*] [CONSIDER INCLUDING A CROSS REFERENCE TO GENERALLY APPLICABLE AUTHORITY FEES THAT WOULD APPLY.]
- (v) **No Refund.** State the policy on refunding any fees. [For example: *“Except as otherwise provided in a [Right of Way Agreement; Franchise Agreement; License], the Provider may remove its Communications Facilities, Poles or Towers from the Public ROW at any time, upon not less than thirty (30) days prior written notice to the Authority, and may cease paying to the Authority any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the Public ROW. In no event shall a Provider be entitled to a refund of fees paid prior to removal of its Communications Facilities, Poles or Towers.”*] [NOTE

THAT PRO RATA REFUNDS ARE AN OPTION JURISDICTIONS MAY WANT TO CONSIDER.]

Section 2.2 Permit Applications [THIS SECTION SHOULD STATE THE PERMIT APPLICATION REQUIREMENTS AND OTHER RELATED REQUIREMENTS.]

- a. Permit Required. State that a permit is required under this Chapter. [For example: *“Unless expressly authorized in this Chapter or in writing by the Authority, no Person may construct, install or maintain in the Public ROW any Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers, including the installation or Collocation of Communications Facilities on existing Poles, Towers, Support Structures or other structures within the Public ROW, without first receiving a Permit. Notwithstanding the foregoing, in the event of an Emergency, a Provider or its duly authorized representative may work in the Public ROW prior to obtaining a Permit, provided that the Provider shall attempt to contact the Authority prior to commencing the work and shall apply for a Permit as soon as reasonably possible, but not later than ___ [days/hours], after commencing the Emergency work. For purposes of this subsection, an “Emergency” means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.”*]
- b. Permit Application Requirements. [For example: *“The Application shall be made by the Provider or its duly authorized representative and shall contain the following:*
 - (i) *The Applicant’s name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.*
 - (ii) *The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.*
 - (iii) *A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter. The Applicant shall state whether the Applicant believes the proposed work is subject to Administrative Review or Discretionary Review and if the Permit is an Eligible Facilities Request. [CONSIDER ADDING BOXES TO CHECK ON THE PERMIT APPLICATION.]*
 - (iv) *If applicable, a copy of the authorization for use of the property from the Pole, Tower or Support Structure owner on or in which the Communications Facility will be placed or attached.*
 - (v) *Detailed construction drawings regarding the proposed facility. [ADD ANY CROSS-REFERENCES TO OTHER EXISTING CODE PROVISIONS THAT PROVIDE SPECIFIC REQUIREMENTS FOR DRAWINGS]*
 - (vi) *To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support*

Structure will be modified to meet structural requirements) in accordance with Applicable Codes.

- (vii) *For any new aboveground facilities, accurate visual depictions or representations, if not included in the construction drawings.”]*
- (viii) [ADD ANY OTHER SUBMISSION REQUIREMENTS, SUCH AS TRAFFIC CONTROL PLANS.]
- c. Proprietary or Confidential Information in Application. State how the Authority will handle proprietary/confidential information and the Applicant’s requirement to mark information as such. [For example: *“Applications are public records that may be made publicly available pursuant to [INSERT STATE LAW AND/OR LOCAL CODE/POLICY]. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly, and the Authority shall treat the information as proprietary and confidential, subject to [INSERT STATE LAW AND/OR LOCAL CODE/POLICY] and the Authority’s determination that the Applicant’s request for confidential or proprietary treatment of Application materials is reasonable. The Authority shall not be required to incur any costs to protect the Application materials from disclosure, other than the Authority’s routine procedures for complying with [INSERT STATE LAW AND/OR LOCAL CODE/POLICY].”*] [THIS LANGUAGE SHOULD BE ADJUSTED TO COMPLY WITH APPLICABLE PUBLIC RECORDS/FREEDOM OF INFORMATION LAWS.]
- d. Ordinary Maintenance and Repair. Describe the requirements for performing Ordinary Maintenance and Repair. [For example: *“A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable Laws and shall notify the Authority in writing at least ____ [days/hours before/after] performing the Ordinary Maintenance and Repair.”*] [AS NOTED ABOVE, A JURISDICTION MAY CHOOSE NOT TO ALLOW ORDINARY MAINTENANCE AND REPAIR WITHOUT A PERMIT (SUBJECT TO APPLICABLE LAWS), IN WHICH CASE THIS PROVISION SHOULD BE DELETED ALONG WITH THE DEFINITION OF THAT TERM.]
- e. Material Changes. State whether, and under what circumstances, a material change to an Application will impact the review process and/or require payment of additional permit fees. [For example: *“The Authority may require payment of an additional Permit application fee in the event the Authority determines, in its sole discretion, that material changes to an Application after submission amount to a new Application and will materially increase the time and/or costs of the Permit review process.”* IF A JURISDICTION WILL INCLUDE SHOT CLOCKS IN SECTION 2.3.b.(ii), CONSIDER ADDING: *“Unless otherwise agreed to in writing by the Authority, any material changes to an Application, as determined by the Authority in its sole discretion, shall be considered a new application for purposes of the time limits set forth in Section 2.3.b.(ii), unless otherwise provided by applicable Laws.”*]

- f. Application Fees and Bonds. State when Application fees must be paid and other financial obligations such as bonds. [For example: *“Unless otherwise provided by applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the Fees required under Section 2.1.b.”*] [INSERT CROSS REFERENCE TO EXISTING BOND REQUIREMENT OR ADD REQUIREMENT HERE, FOR EXAMPLE: *“Unless otherwise provided in a franchise agreement or agreed to in writing by the Authority, a performance bond or other form of surety acceptable to the Authority equal to at least one hundred percent (100%) of the estimated cost of the work within the Public ROW shall be provided before the Applicant commences work.”*]
- g. Effect of Permit. [For example: *“A Permit from the Authority authorizes an Applicant to undertake only the activities in the Public ROW specified in the Application and Permit, and in accordance with this Chapter and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public ROW; a Permittee or Provider must obtain all necessary approvals from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant authority to the Applicant to interfere with other existing uses of the Public ROW.”*]
- h. Duration. [For example: *“Any Permit for construction issued under this Article II shall be valid for a period of ____ days/weeks/months after issuance.”*] [CONSIDER PROVIDING FOR EXTENSION OF TIME, FOR EXAMPLE: *“Any Permit for construction issued under this Article II shall be valid for a period of ____ [days/weeks/months] after issuance, provided that the ____ [day/week/month] period [may/shall] be extended for up to an additional ____ [days/weeks/months] upon written request of the Applicant (made prior to the end of the initial ____ [day/week/month] period) if the failure to complete construction is as a result of circumstances beyond the reasonable control of the Applicant.”*]
- i. [CONSIDER ALSO INCLUDING A BATCH PERMIT PROVISION TO ALLOW MULTIPLE APPLICATIONS TO BE SUBMITTED AT ONE TIME. For example: *“An Applicant may simultaneously submit not more than _____ (____) Applications for Communications Facilities, or may file a single, consolidated Application covering such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Authority. If the Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each Communication Facility were a separate Application. [ADJUST THIS IF A DISCOUNT IS GIVEN FOR BATCH APPLICATIONS.]”*] [CONSIDER INCLUDING A MONTHLY OR OTHER TIME-BASED LIMIT ON FILING CONSOLIDATED OR BATCH APPLICATIONS, ESPECIALLY IF THERE IS AN APPLICABLE SHOT CLOCK. ALSO CONSIDER OTHER APPLICABLE LIMITS, SUCH AS DISTANCE, WITH RESPECT TO BATCH WIRELINE APPLICATIONS SO THAT APPLICATIONS ARE REVIEWABLE IN A TIMELY MANNER.]

Section 2.3 Administrative Review [INSERT BELOW THOSE TYPES OF DEPLOYMENTS THAT MAY BE APPROVED BY ADMINISTRATIVE REVIEW WITHOUT A PUBLIC HEARING. THESE MUST MEET THE OTHER CRITERIA

ESTABLISHED IN THIS CHAPTER, BUT SO LONG AS THEY DO THERE WOULD NOT BE DISCRETION TO DENY THE PERMIT. THIS SECTION OR THE DESIGN CRITERIA SHOULD REFERENCE LAND USE ZONES IF THE JURISDICTION WANTS CERTAIN ZONES (E.G., HISTORIC, RESIDENTIAL) TO HAVE DIFFERENT STANDARDS OF REVIEW. THE PROVISIONS BELOW PROVIDE SAMPLE LANGUAGE BASED ON THE BDAC RECOMMENDATION (WITH MODIFICATIONS). JURISDICTIONS MUST REVIEW APPLICABLE LAWS TO ENSURE THAT THIS SECTION IS CONSISTENT WITH STATE OR FEDERAL REQUIREMENTS, AND SHOULD ADJUST THE LANGUAGE TO MEET COMMUNITY NEEDS AND INTERESTS SUBJECT TO APPLICABLE LAWS.]

- a. Permitted Use. Describe uses that will be approved on Administrative Review. [For example: *“The following uses within the Public ROW shall be permitted uses, subject to Administrative Review and issuance of a Permit as set forth in this Section 2.3. All such uses shall be in accordance with all other applicable provisions of this Chapter, including without limitation, those set forth in Section 2.5 below [IF APPLICABLE ADD: and the terms of any Right of Way Agreement/ Franchise Agreement/License].*
- (i) *Collocation of a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3.c or a Collocation that qualifies as an Eligible Facilities Request.* [COLLOCATION IS LIMITED TO PLACEMENT OF SMALL WIRELESS FACILITIES ON A TOWER, OR ON A SUPPORT STRUCTURE OR POLE THAT HOLDS AT LEAST ONE SMALL WIRELESS FACILITY AT THE TIME OF THE APPLICATION. CONSIDER WHETHER THERE ARE INSTANCES IN WHICH THE INITIAL PLACEMENT OF A SMALL WIRELESS FACILITY ON A SUPPORT STRUCTURE OR POLE SHOULD BE PERMITTED ON ADMINISTRATIVE REVIEW AND, IF SO, ADD APPROPRIATE LANGUAGE TO THIS SECTION. NOTE THAT THE BDAC DEFINITION OF “COLLOCATION” INCLUDES REPLACEMENT OF EXISTING COMMUNICATIONS FACILITIES SUCH AS SWAPPING OUT ANTENNAS. THE PROPOSED DEFINITION IN THIS MODEL DOES NOT INCLUDE REPLACEMENT, SO JURISDICTIONS MAY WANT TO CONSIDER INCLUDING AS A PERMITTED USE THE REPLACING OF FACILITIES THAT ARE THE SAME TYPE/SIZE/AESTHETICS/ETC.]
 - (ii) *Modification of a Pole, Tower or Support Structure or Replacement of a Pole for Collocation of a Communications Facility where the modification or Replacement qualifies as an Eligible Facilities Request.*
 - (iii) *Construction of a new Pole or a monopole Tower (but no other type of Tower) to be used for a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3.c, provided that there are existing poles of similar height within ____ feet of either side of the proposed new Pole or monopole Tower.* [THIS IS A MODIFICATION OF THE BDAC MODEL AND HAS BEEN LEFT FOR CONSIDERATION; HOWEVER, NEW POLES/TOWERS MAY NOT BE APPROPRIATE IN SOME ZONES OR UNDERGROUNDING DISTRICTS WITH ADMINISTRATIVE REVIEW

ONLY. JURISDICTIONS SHOULD CONSIDER CHANGES TO THIS SECTION TO REFLECT LOCAL NEEDS AND INTERESTS.]

- (iv) *Construction of a Communications Facility, other than those set forth in subsections (i), (ii) or (iii) in this Section 2.3.a, involving the installation of coaxial, fiber-optic or other cabling, that is installed underground or aboveground between two or more existing Poles or an existing Pole and an existing Tower and/or existing Support Structure, and related equipment and appurtenances.* [CONSIDER ADDRESSING THE SIZE AND LOCATION OF “RELATED EQUIPMENT AND APPURTENANCES” IF NOT ADDRESSED IN THE DESIGN STANDARDS.]]
- b. Application Review. [INSERT APPLICATION REVIEW REQUIREMENTS, INCLUDING THE STANDARD FOR ADMINISTRATIVE APPROVAL OF APPLICATIONS THE COMPLY WITH THIS SECTION.] For example:
 - (i) *“The Authority shall review the Application and, if the Application conforms with applicable provisions of Section 2.2 and this Section, the Authority shall issue the Permit, subject to the standard permit requirements published by the Authority.”*
 - (ii) [THE FOLLOWING OPTION IS FROM THE BDAC MODEL. NOTE THAT THESE TIMELINES MAY NOT BE REQUIRED BY APPLICABLE LAW. IF A JURISDICTION OPTS TO INCLUDE TIMELINES FOR APPROVING PERMITS, THE TIMELINES SHOULD BE MADE CONSISTENT WITH APPLICABLE STATE AND FEDERAL TIMELINES.] *“Except as otherwise provided by applicable Laws, the Authority shall:*
 - (A) *Within ___ days of receiving an Application, notify the Applicant if the Application is incomplete, and identify the missing information. The Applicant may resubmit the completed Application within ___ days without additional charge, in which case the Authority shall have ___ days from receipt of the resubmitted Application to verify the Application is complete, notify the Applicant that the Application remains incomplete or, in the Authority’s sole discretion, deny the Application; and*
 - (B) *Make its final decision to approve or deny the Application within ___ days for a collocation, and ___ days for any new structure, after the Application is complete (or deemed complete in the event the Authority does not notify the Applicant that the Application or resubmitted Application is incomplete).*
 - (iii) *The Authority shall advise the Applicant in writing of its final decision.”*
 - (iv) [CONSIDER INCLUDING AUTHORITY FOR APPROPRIATE STAFF TO WAIVE MINOR VARIANCES FROM THE REQUIREMENTS OF THIS CHAPTER AND APPROVE APPLICATIONS BY ADMINISTRATIVE REVIEW RATHER THAN DISCRETIONARY REVIEW.]

- c. Maximum Height of Permitted Use. Establish height limits on permitted uses described in subsection 2.3.a. [For example: *“Small Wireless Facilities, and new, modified or Replacement Poles, Towers and Support Structures in the Public Right of Way may be approved through Administrative Review as provided in Section 2.3.a only if the following requirements are met:*
- (i) *Each new, modified or Replacement Pole, Tower or Support Structure installed in the Public ROW shall not exceed ____.”* [INSERT HEIGHT LIMITS OR REFERENCE EXISTING LIMITS ON POLE HEIGHTS IN THE ROW. CONSIDER WHETHER THE LIMIT SHOULD BE THE SAME IN ALL ZONES; WHETHER THE LIMIT SHOULD BE RELATIVE TO EXISTING POLES OR BASED ON HEIGHT FROM THE GROUND (OR THE LESSER/GREATER OF BOTH). NOTE THAT THIS LIMIT WILL APPLY TO POLES THAT HOLD WIRELINE AND WIRELESS FACILITIES.]
 - (ii) *“New Small Wireless Facilities in the Public ROW shall not exceed ____.”* [INSERT HEIGHT LIMITS FOR POLES/TOWERS/SUPPORT STRUCTURES, INCLUDING ATTACHED WIRELESS FACILITIES, IF NOT ADDRESSED IN SUBSECTION (i) ABOVE. CONSIDER WHETHER THE LIMIT SHOULD BE THE SAME IN ALL ZONES; WHETHER THE LIMIT SHOULD BE RELATIVE TO EXISTING POLES OR BASED ON HEIGHT FROM THE GROUND (OR THE LESSER/GREATER OF BOTH). ANOTHER OPTION, RECOGNIZING THAT STANDARD STREET LIGHTS CAN BE FITTED WITH A CANISTER THAT WILL INCREASE THE HEIGHT OF THE LIGHT POLE, IS WHETHER TO PERMIT A HEIGHT COMPARABLE TO LIGHT POLES WITHIN A CERTAIN DISTANCE, PLUS AN ADDITIONAL NUMBER OF FEET (E.G. 5 OR 8 FEET).]
- d. Design Standards. Establish the design standards a deployment must meet to be considered a permitted use as described in subsection 2.3.a. [For example: *“All aboveground Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers in the Public ROW may be approved through Administrative Review to the extent provided in Section 2.3.a only if the following design guidelines are met.”*] [ESTABLISH OBJECTIVE DESIGN STANDARDS WITH WHICH AN APPLICANT CAN (AND MUST) DEMONSTRATE COMPLIANCE IN THE APPLICATION TO QUALIFY FOR ADMINISTRATIVE REVIEW AND APPROVAL. THE FOLLOWING IS A LIST OF ISSUES TO CONSIDER ADDRESSING IN THE STANDARDS.]
- (i) Height, size, shape, color and related requirements and/or limits for poles, towers, support structures, antennas and ground-mounted equipment.
 - (ii) Structure design/style (consider new/replacement use cases).
 - (iii) Limits on number, location or styles of poles, support structures and towers that may be installed or used.
 - (iv) Aesthetic approach for different types of facilities.

- (v) Construction approach per facility, including powering and metering.
- (vi) Structural integrity/remediation approach per facility.
- (vii) Electrical integrity/remediation approach per facility.
- (viii) Set-backs for poles, towers, support structures, antennas and ground-mounted equipment.
- (ix) Limits on use of ground-mounted equipment for wireless facilities (e.g., may be used only to house equipment and other supplies in support of the operation of the wireless facility or required to be placed in an underground vault).
- (x) Lighting, marking and noise requirements and/or limits.
- (xi) Fencing/landscaping/screening/signage requirements and/or limits.
- (xii) Collocation analysis.
- (xiii) Alternative site analysis.
- (xiv) Use of decorative poles.
- (xv) [CONSIDER WHETHER ANY OF THESE REQUIREMENTS SHOULD BE DIFFERENT IN DIFFERENT ZONES, HISTORIC AREAS, ENVIRONMENTALLY SENSITIVE AREAS, ETC.]

Section 2.4 Discretionary Review and Approval.

This Section should describe when discretionary review applies. [For example: “*All other uses within the Public ROW not expressly set forth or referenced in Section 2.3.a shall require compliance with, and issuance of, a permit under [CITE TO EXISTING REQUIREMENTS OF THE CITY CODE/CHARTER THAT REQUIRE DISCRETIONARY REVIEW].*”] [DEPENDING ON LOCAL CODES AND PREFERENCES, THIS MAY REQUIRE A PERMIT UNDER THIS SECTION (TO AUTHORIZE CONSTRUCTION IN THE ROW) AS WELL AS A LAND USE/ZONING APPROVAL, IN WHICH CASE A DISTINCTION SHOULD BE MADE IN THIS SECTION BETWEEN THE TWO PERMITS AND BOTH SHOULD CLEARLY BE REQUIRED.]

Section 2.5 General Public ROW Installation Requirements.

- a. General Work Requirements. [INSERT GENERAL WORK REQUIREMENTS THE PERMITTEE MUST FOLLOW OR REFERENCE EXISTING CODE REQUIREMENTS THAT A PERMITTEE MUST FOLLOW. NOTE THAT THIS IS DIFFERENT FROM THE ROW REQUIREMENTS IN SECTION 2.1, WHICH APPLY TO THE OWNER OF THE FACILITIES AND APPLY THROUGHOUT THE TERM OF THE FRANCHISE/AGREEMENT/LICENSE OR OCCUPANCY OF THE ROW, WHEREAS THIS SECTION APPLIES TO THE WORK IN THE ROW, WHICH MAY BE PERFORMED BY A CONTRACTOR ON BEHALF OF A PROVIDER. BELOW IS A LIST OF ISSUES TO CONSIDER INCLUDING IN THIS SECTION.]

- (i) General safety and compliance with laws. [For example: *“The Permittee shall employ due care during the installation, maintenance or any other work in the ROW, and shall comply with all safety and Public ROW-protection requirements of applicable Laws, Applicable Codes, and any generally applicable Authority guidelines, standards and practices, and any additional commonly accepted safety and Public ROW-protection standards, methods and devices (to the extent not inconsistent with applicable Laws).”*]
- (ii) Traffic control. [For example: *“Unless otherwise specified in the Permit, the Permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The Permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the Authority.”*]
- (iii) Interference. [For example: *“The Permittee shall not interfere with any existing facilities or structures in the Public ROW, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.”*]
- (iv) Utility Locates. [For example: *“Before beginning any excavation in the Public ROW, the Permittee shall comply with [INSERT REFERENCE TO STATE OR LOCAL LAW ON UTILITY LOCATES OR “CALL BEFORE YOU DIG”].”*]

b. Compliance with Permit.

- (ii) State that the Permittee must follow permit requirements. [For example: *“All construction practices and activities shall be in accordance with the Permit and approved final plans and specifications. The Authority and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the Permittee. The Authority may stop work in order to assure compliance with the provision of this Chapter.”*]
- (i) Address any needed additional permits. [For example: *“In addition to obtaining a Permit for installation of a Communications Facility, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers in the Public ROW, an Applicant must obtain all other required permits, including but not limited to, [insert other specific local permits].”*]

c. Mapping Data. Insert required maps and as-builts. [For example: *“The Permittee shall provide to the Authority as-builts, in a format designated by the Authority or otherwise compatible with such format, showing the location of Communications*

Facilities, Poles, Support Structures and Towers upon completion of the permitted work.”]

- d. [CONSIDER ANY OTHER CONSTRUCTION-RELATED ISSUES TO INCLUDE.]

Section 2.6 Attachment to and Replacement of Decorative Poles. [CONSIDER ADDRESSING ATTACHMENTS TO DECORATIVE POLES. THE EXAMPLE LANGUAGE BELOW IS A MODIFIED VERSION OF THE BDAC RECOMMENDATION. NOTE THAT, IF CONSISTENT WITH APPLICABLE LAWS, A JURISDICTION MAY OPT TO HAVE ALL CHANGES/ATTACHMENTS TO DECORATIVE POLES GO THROUGH A DISCRETIONARY REVIEW PROCESS RATHER THAN ADMINISTRATIVE REVIEW. THE BDAC MODEL LANGUAGE, INCLUDED BELOW, REGARDING WHETHER CHANGES ARE “IN KEEPING WITH THE AESTHETICS OF THE DECORATIVE POLE,” APPEARS TO BE A DISCRETIONARY DECISION AND THUS MAY BE MORE APPROPRIATELY CONSIDERED THROUGH DISCRETIONARY REVIEW.]

[For example: *“Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, or replace a Decorative Pole with a new Decorative Pole unless the Authority has determined, in its sole discretion, that each of the following conditions has been met:*

- a. *The Application qualifies for issuance of a Permit under Section 2.3.a;*
- b. *The attachment and/or the replacement Pole is in keeping with the aesthetics of the Decorative Pole.”* [CONSIDER REVISING TO MEET LOCAL POLICY GOALS]; and
- c. [INSERT ANY OTHER CRITERIA FOR PERMITTING ATTACHMENTS TO OR REPLACEMENT OF DECORATIVE POLES].

[CONSIDER EXPANDING THE SCOPE OF THIS SECTION TO COVER HISTORIC DISTRICTS AND OTHER SENSITIVE AREAS, THOUGH SEE THE NOTE ABOVE REGARDING THE DISCRETIONARY NATURE OF THIS REVIEW. FOR EXAMPLE: *“Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, replace a Decorative Pole with a new Decorative Pole, or install new above-ground Communications Facilities in [INSERT NAME OF ZONES/DISTRICTS] unless the Authority has determined, in its sole discretion, that each of the following conditions has been met:*

- a. *The Application qualifies for issuance of a Permit under Section 2.3.a;*
- b. *The attachment and/or the replacement Pole is in keeping with the aesthetics and character of the Decorative Pole and/or the [INSERT NAME OF ZONES/DISTRICTS].”]*

Section 2.7 Violation of this Chapter.

Include appropriate language regarding violations of this Chapter. [For example: *“Violation of any of the provisions of this Chapter shall be a [INSERT APPLICABLE TERM, E.G., simple citation] punishable with a civil penalty of \$_____ for each violation. Each day that a violation*

occurs or is permitted to exist by the Applicant or Provider constitutes a separate offense.”]
[CONSIDER INSTEAD REFERENCING AN EXISTING GENERALLY APPLICABLE
VIOLATION/PENALTY PROVISION OF THE CODE AND NOTICE/OPPORTUNITY TO CURE
OR OTHER PROCESS TO CONTEST THE VIOLATION.]

Section 2.8 Effective Date.

Insert appropriate language regarding the effective date of the ordinance. [For example: *“This Chapter shall take effect __ (__) days after its passage, approval and publication.”*]