

City of Salem, Massachusetts



"Know Your Rights Under the Open Meeting Law, M.G.L. c. 30A ss. 18-25 and  
City Ordinance Sections 2-2028 through 2-2033."

The City Council Committee on Government Services co-posted with the Committee of the Whole

met in the Council Chamber Wednesday, February 10, 2016 at 6:00 P.M.

for the purpose of discussing the matters(s) listed below. Notice of this meeting was posted on  
February 1, 2016 at 1:42 P.M.

(This meeting is being recorded)

ATTENDANCE

ABSENT WERE: member of committee of the whole - Epplay

SUBJECT(S)

# 45 - Meet to discuss guidelines for cell tower (CO-POSTED)

#631 of 2015 - Create an Ordinance relative to Traffic to create a Traffic and Parking Commission (CO-POSTED)

#45 Discussion

\* presentation of information: Asst. City Solicitor V. Caldwell  
(ppt included in public record)

\* C. McCarthy - Question: Does the city own all poles?

(metal)  
J. Giardi - own aluminium poles custody of ~~city~~

\* C. McCarthy - How can city prevent use of every pole / limit locations?

V. Caldwell - structure of the pole limits

\* C. McCarthy - How do we limit additional poles?

V. Caldwell - can limit by ordinance

\* C. Turiel - do we have any wooden poles owned by city?

J. Giardi  
~~J. Giardi~~ - 97%

\* C. Dibb - can we manage?

V. Caldwell - can limit by ordinance, or prohibit

\* C. Dibb - statement - have process with electrician

J. Giardi - create rating slip to be filled out prior to petition to  
Council

\* denotes member of committee

• Dibbel - discussed application of underground work and requirements  
would support an ordinance

• Public comment:

• Bonnie Belair, Wharf St - support asst. solicitor's recommendations

<sup>suggests</sup>  
- short-term moratorium 3-6 months - aesthetics, safety, compliance,  
setbacks → help city not have excess

• George Atkins 59 Federal St, representing Mobilite

- agrees for need for regulations, disagrees with moratorium,  
existing locations should be acted upon, bring companies  
before committee to possibly approve some on approval  
condition of license with city and Council approval

• Kristine Doll, 30 Forrester St

• Appreciative to Asst. City Solicitor & Ms Belair

• Take into consideration quality of life & take time.

• City Electrician John Giardi

• establish fee (application/permit), annual fee

• examples

• C. Furey - Has city electrician known of other cities and towns?

J. Giardi we aren't the lone wolf

\* C. McCarthy - Whereas there are already applications how do we  
work with those before us?

V. Caldwell - may be able to process, some may be granted  
with some rules that we will have going forward

\* C. Famico - when will Asst. city solicitor be ready to move forward?

V. Caldwell - not sure, need time

• C. Milo - suggests keep it in committee



# CITY OF SALEM

Government Services

In City Council, 2/10/2016

~~Order~~

\* denotes member of committee

\* C. Sargent - Is it cleaner to turn down and reapply?

V. Caldwell - Concern without set rules

- pause in discussion -

## #631 - Parking & Traffic [6:37pm]

\* Mayor Driscoll - review of history of proposal

- currently - control of council, sign off of police

- proposal - traffic engineering expertise, traffic calming

\* Chief Butler - take coordinated approach, look at city in a larger way for smaller issues

- would like to see someone from planning

- sees proposal as being helpful, puts all voices at the table for a full circle approach

\* C. Gerard - Q: handicap placards - how would it work? only meet 1x/month

Mayor: A: sees that it could be an administrative process, can be streamlined

\* C. Sargent - doesn't see handicap placard as being sole issue - not reason to proceed

\* C. McCarthy - why 9 members?

Mayor: mix of staff and residents, make sure departments effected in decisions involved. clarified: 7

\* C. McCarthy: suggests addition of a councillor, sees parking issues varies with different areas (downtown, Derby, University, common) - and one more resident

Mayor: open to discussion, designed for orderly process, comprehensive look



# CITY OF SALEM

Government Services

In City Council, 2/10/2014

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\* denotes member of committee

• C. Furey - should the council appointee rotate at different meetings?

Not a permanent member

• Mayor - thinks it's a good suggestion, help communication pipeline, may change effective process

• Lively - recent experience with traffic Lt positive, layer of expertise he would appreciate. Doesn't like veto part of proposal, would like board to make recommendation for approval

• C. Ryan - sees needs for planning, electric, would like to see it more like CPC. Commission would help with planning for commission, but with balance

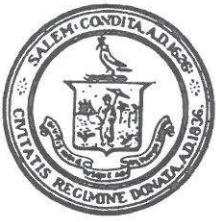
Mayor - need for improving ways with professional perspective

\* C. Sargent - mayor can work with parking board to move things forward, against veto section of proposed ordinance (unelected-pass, elected-veto) comprehensive parking plan had experts, but don't live in community, council revisited implemented plan and altered it.

• C. Dibbte - would like to involve different councillors, thankful to mayor for bringing ordinance forward - needed, allows 2<sup>nd</sup> set of eyes and brings expertise together

• could it be similar to planning for zoning change?

Mayor - open to discussing, rules theory for major/minor goal to improve and ownership



# CITY OF SALEM

(4)

Government Services

In City Council, 2/10/2016

~~\_\_\_\_\_~~ \* denotes member of committee

• R. Preczewski, police Lt. - traffic - in support of a councillor, currently - no status reports - no process, makes recommendations - doesn't know who is handling different aspects, time for everyone to sit down together. The city has grown, it's time for professionalism and set group

Mayor - communication, funding, piece everything together

\* • C. Milo - time to have stakeholders at the table, if commission in place - doesn't see decisions being a surprise, questions approval vrs. veto power

\* • C. Sargent - ok with professionals, questions need for commission, leave final votes to council, questions expertise vrs. experts who live in the city

• C. Turiel - past time of council need for some decisions (handicap), proposed ordinance step in the right ~~direction~~ direction, helps streamline

\* • C. Milo - Q: Expectation to also develop internal procedures?

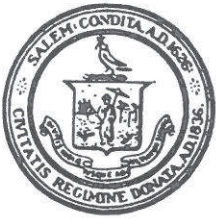
Mayor - A: Yes, and administratively handle as well as bigger matters.

\* • C. Famico - can we separate veto + approval?

Mayor - yes, can examine

\* • C. Famico - can we have a traffic + parking before commission?  
How would organization work?

Mayor - All under, parking manager would fall under



# CITY OF SALEM

5

In City Council, Government Services  
2/10/2016

\* denotes member of committee

\* C. Sargent - could councilors still bring forward

Mayor - council could petition

C. Sargent - doesn't want to lose ability to initiate, even if to  
commission in timely manner

\* C. Gerard - if we had commission part of planning board decision  
based on commission's vote, sees need for further  
discussion, need for bicycling advisory committee

C. Ryan - In Favor of breaking decisions down & central location  
Where would the commission fall?

Mayor - sees it under Engineering

C. Ryan - where would the money come from?

Mayor - neutral this year (vacancy), FY17 - increase, great to  
have director in place - can help with protocols

C. Dibble - commission would help with problem areas

Q: public involvement in commission

Mayor: public meetings, public agenda, opportunity for plans to  
go out before, similar to ZBA. Create norms (handicap  
vrs. resident) -

Q: Clarification - would all projects go before board (commission)?

Mayor: TBD

## -PUBLIC COMMENT-

C. John Carr, 7 River St - OK with efficiency, wants council to  
approve & not veto. 2 levels of problem: 1) bread + butter (handicap)  
2) rerouting traffic, traffic calming measures, lights, draw in  
experience of similar cities + towns - what works + doesn't work?



# CITY OF SALEM

6

Government Services

In City Council, 2/10/2016

\* denotes member of committee

• Tim Jenkins, 18 Broad St - prefers simple majority vote, housekeeping can be done more efficiently, ultimate approval with commission

• Geoff Millar, 18 Forrest Ave - processes need examination, no matter what handicap signs need reexamination, holistic body (commission) great idea - <sup>areas where different bodies needed:</sup> stop signs, resident parking (requires more process + data), oversight on how one change affects another area, need for notice and communication, remembers parking plan altered before implementation

\* C. Sargent - Resident parking not always about spaces, it's about the effect of businesses

C. Milo moves to <sup>keep</sup> ~~move~~ in committee

C. Gerard - second

discussion - (Ryan should it go to C.O.L.L.A.?)

C. Sargent - C.O.L.L.A.?

C. Mc. Carthy - suggests remain in Gov. Services

Mayer - series of ordinances, part for parking + traffic director, need to form commission

C. Milo - Question relative to section?

McCarthy - separate ordinance (Question)

Gerard - 2nd

discussion - Lt. Preczewski - speed change requires councillor

All in Favor of splitting - unanimous

(7)



# CITY OF SALEM

In City Council, Government Services  
2/10/2016

~~Ord:~~

All in favor of keeping sec. 1 - unanimous to Gov. Secs

All in favor of referring Sec. 2 - unanimous refer to OLLA

-Return to #45-

V. Caldwell - no timeline on applications

C. McCarthy - motion to keep in committee

C. Gerard - seconded

All in favor - unanimous

C. Sargent - motion to adjourn

C. McCarthy - 2nd 8:16 PM

On the motion of C.

the meeting adjourned at 8:16 P.M.

(Chairperson)





## CITY OF SALEM, MASSACHUSETTS

Kimberley Driscoll  
Mayor

October 22, 2015

Honorable Salem City Council  
Salem City Hall  
Salem, Massachusetts 01970

Ladies and Gentlemen of the City Council:

Attached please find two proposed ordinance changes aimed at improving and modernizing the manner in which we oversee and regulate traffic, parking, and transportation matters in the City of Salem. As you know, traffic and parking are two priority areas of attention for many residents and businesses in Salem. We have made great strides in improving parking accessibility downtown working with the current Parking Board and staff. However, we envision having a broader Traffic and Parking Commission staffed with a professional transportation planner or engineer that can work on key parking issues, as well as help manage important neighborhood traffic/transportation matters, such as a citywide traffic calming initiative, review of the current resident sticker parking program, etc. In order to accomplish this work, we will need to amend the current Ordinances related to the Parking Board and Parking Director.

The first Ordinance changes the job title of the position from Executive Director of the Parking Department to the Director of Traffic and Parking and amends the term of appointment from one year to two years, which is consistent with other department heads. This ordinance additionally expands the responsibilities of the position to include, in addition to overseeing parking management and facilities, traffic planning and policy development, including providing assistance with the annual road rehabilitation program, implementing planned technology upgrades and routine maintenance at the garages, meters, and lots, serving on the Complete Streets Working Group, and overseeing a new Residential Traffic Calming program that our administration is finalizing. The Director will take full responsibility for the implementation and updating of the comprehensive parking plan. Furthermore the Director shall staff the new Traffic and Parking Commission. This brings me to the second requested Ordinance change.

The second Ordinance attached herewith abolishes the Transportation Advisory Commission, which is on the books, but has been defunct for over a decade, and the Parking Board, replacing both with a new Traffic and Parking Commission. This is a model similar to what many other urban communities have utilized to great success. The seven-member Commission is comprised

of the Police Chief or their designee, the Fire Chief of their designee, the City Engineer or their designee, the Director of Public Services or their designee, and one business owner and two residents appointed by the Mayor with Council confirmation. The Director of Traffic and Parking will staff the Commission, providing guidance and professional support in the course of their deliberations.

Under the second proposed Ordinance, the authority for establishing any new regulations related to parking and traffic in Salem shall be with the Commission, by majority vote. The City Council may overrule any determination of the Commission by a two-thirds vote. This proposal places traffic regulation within the purview of public safety officials and professional traffic planners, who can approach proposed changes with a comprehensive perspective of potential impacts or problems, while also preserving the important role of the Council as the democratically elected representative of the voters.

As you may know, the Commission concept was initially proposed in 2007, but it was not acted upon by the City Council at that time. In 2007 I wrote to the Council that "given the complexity of the issues we face in Salem regarding traffic and parking, it seems that the time is right consider other options for dealing with these matters in a more professional and comprehensive manner." If anything, the interceding eight years have only made that more true today.

I look forward to working with you to modernize and improve how we manage, innovate, and improve traffic and parking in Salem.

Very truly yours,



Kimberley Driscoll  
Mayor  
City of Salem

# City of Salem

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*In the year Two Thousand and Fifteen*

## **An Ordinance**

*Be it ordained by the City Council of the City of Salem, as follows:*

### **Section 1.**

relative to traffic and parking

Delete in their entirety the Parking Department Board, Chapter 2, Article VIII, Division 2 and the Transportation Advisory Commission, Chapter 2, Article IV, Division 12 and replace with a new Traffic and Parking Commission within Chapter 2, Article IV as follows:

#### “DIVISION 12. – TRAFFIC AND PARKING COMMISSION

Sec. 2-986. - Created; composition; compensation of members.

The traffic and parking commission is established. Such commission shall consist of seven members. Four members shall serve ex-officio, the police chief, fire chief, director of public services and city engineer. The ex-officio members may designate a subordinate member of their department to serve on the commission. One member shall be nominated by the Chamber of Commerce for appointment by the mayor and two residents shall be appointed by the mayor, all three subject to city council confirmation. The members of the commission shall serve without compensation, but shall be allowed their reasonable and necessary expenses incurred in the performance of their duties as such members.

Sec. 2-987. - Appointment; term; removal; filling vacancies; organization

The Mayor shall appoint the initial members, excluding ex-officio members, of the Commission as follows: one member shall serve for a term of one year; one member shall serve for a term of two years; and one member shall serve for a term of three years. Thereafter and upon expiration of the term of each such member, the Mayor shall appoint members of the Commission to succeed such appointees whose terms expire and each member so appointed shall hold office for a term of three years. Members shall hold office for specified terms from February 1 next following such appointment.

Immediately after their appointment, the members of the traffic and parking commission shall meet and organize by electing one of the members as chairperson and such other officers as may be necessary. Each officer shall serve for a one year term from February 1 next following such election.

**Sec. 2-988. - Powers, duties and responsibilities generally.**

The traffic and parking commission shall be charged with the control, development, management, operation, and maintenance of all on-street and off-street, automobile parking facilities within the city or to contract therefor, provided there is compliance with competitive bidding requirements. Reasonable regulations not inconsistent with the provisions of any statute or ordinance for the orderly use of off-street parking facilities shall be prescribed by the commission, as well as a schedule of parking fees and other charges for the use of such facilities with the approval of the mayor and the city council, whether such facilities are operated by the commission or under contract therefor. In determining parking fees, the commission shall give consideration to the needs of the public and merchants to provide parking at the lowest cost possible.

The traffic and parking commission shall also oversee traffic planning and policy development for the city; implementation of the city's complete streets policy; planning and implementation of any residential traffic calming initiatives; planning and installation of on and off-street parking and transit related technology improvements; and implementation of the city's comprehensive parking plan, updating it as necessary.

**Sec. 2-989. - Limitations.**

Nothing in this division shall be construed as giving the traffic and parking commission power to supersede the police department in the regulation and enforcement of parking on the city streets."

**Section 2.** Amend Chapter 2, Article VIII, by deleting Division 2 in its entirety and renaming Division 3 as Division 2, renumbering the sections within the newly created Division 2 beginning with Sec. 2-1396 and further amending the newly created Article VIII, Division 2 by:

- a) replacing the term "parking department" with the term "traffic and parking department" as it appears in this Article;
- b) replacing the Appointment term of the Traffic and Parking Executive Director of "one year" with "two years"; and
- c) inserting the following responsibilities of the Executive Director immediately following Responsibilities (b)(5):

- (6) Carry out traffic planning and policy development for the City, including providing review of all traffic modifications, parking changes, or other similar activities, whether regulatory or through construction
- (7) Assist with implementation of the City's Complete Streets Policy
- (8) Oversee Residential Traffic Calming initiatives and other similar traffic programs
- (9) Serve as the City's point person on major state and local roadway and corridor improvement projects
- (10) Plan, install, and oversee parking and transit related technology improvements
- (11) Continue implementation of the existing comprehensive parking plan, updating it as necessary.
- (12) Staff the Traffic and Parking Commission

**Section 3.** This Ordinance shall take effect as provided by city charter.

In City Council October 22, 2015

**Received after the deadline of Tuesday noon under suspension of the rules**  
Referred to the Committee on Government Services co-posted with the Committee  
of the Whole

ATTEST:

CHERYL A. LAPOINTE  
CITY CLERK

# City of Salem

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*In the year Two Thousand and Fifteen*

**An Ordinance** to amend an ordinance relative to traffic and parking

*Be it ordained by the City Council of the City of Salem, as follows:*

**Section 1.** Delete in their entirety the Parking Department Board, Chapter 2, Article VIII, Division 2 and the Transportation Advisory Commission, Chapter 2, Article IV, Division 12 and replace with a new Traffic and Parking Commission within Chapter 2, Article IV as follows:

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Sec. 2-986. - Created; composition; compensation of members.

The traffic and parking commission is established. Such commission shall consist of seven members. Four members shall serve ex-officio, the police chief, fire chief, director of public services and city engineer. The ex-officio members may designate a subordinate member of their department to serve on the commission. One member shall be nominated by the Chamber of Commerce for appointment by the mayor and two [salem](#) residents shall be appointed by the mayor, all three subject to city council confirmation. The members of the commission shall serve without compensation, but shall be allowed their reasonable and necessary expenses incurred in the performance of their duties as such members.

Sec. 2-987. - Appointment; term; removal; filling vacancies; organization.

The Mayor shall appoint the initial members, excluding ex-officio members, of the Commission as follows: one member shall serve for a term of one year; one member shall serve for a term of two years; and one member shall serve for a term of three years. Thereafter and upon expiration of the term of each such member, the Mayor shall appoint members of the Commission to succeed such appointees whose terms expire and each member so appointed shall hold office for a term of three years. Members shall hold office for specified terms from February 1 next following such appointment.

Immediately after their appointment, the members of the traffic and parking commission shall meet and organize by electing one of the members as chairperson and such other officers as may be necessary. Each officer shall serve for a one year term from February 1 next following such election.

[Commission meetings shall occur no less than once per month and commence no earlier than six p.m., unless special circumstances require otherwise.](#)

Sec. 2-988. - Powers, duties and responsibilities generally.

The traffic and parking commission shall be charged with the control, development, management, operation, and maintenance of all on-street and off-street, automobile parking facilities within the city or to contract therefor, provided there is compliance with competitive bidding requirements. Reasonable regulations not inconsistent with the provisions of any statute or ordinance for the orderly use of off-street parking facilities shall be prescribed by the commission, as well as a schedule of parking fees and other charges for the use of such facilities with the approval of the mayor and the city council, whether such facilities are operated by the commission or under contract therefor. In determining parking fees, the commission shall give consideration to the needs of the public and merchants to provide parking at the lowest cost possible.

The traffic and parking commission shall also oversee traffic planning and policy development for the city; implementation of the city's complete streets policy; [adopt or amend regulations relative to traffic and parking](#); planning and implementation of any residential traffic calming initiatives; planning and installation of on and off-street parking and transit related technology improvements; [review and act, as necessary, on traffic and parking regulation petitions](#); and implementation of the city's comprehensive parking plan, updating it as necessary.

[Upon the adoption of this ordinance, all traffic ordinances found in chapter 24 of the code of ordinances shall become regulations of the commission.](#)

[Any salem resident or business owner may petition the commission for action related to traffic and parking in the city.](#)

Sec. 2-989. -- [Effective date of regulations; limitations.](#)

[Any regulation adopted by the commission shall be forwarded to each member of the city council within five days of adoption. No regulation adopted by the commission shall be final until 14 days have elapsed following its adoption and no written objection has been filed with the commission by any member of the city council. Upon the filing of an objection, the objecting city councilor\(s\) shall notify the city clerk to place the regulation before the city council at its next regularly scheduled meeting. The city council shall have the authority, by a two-thirds vote of its members, to veto any regulation adopted by the commission and timely objected to by a city councilor.](#)

Nothing in this division shall be construed as giving the traffic and parking commission power to supersede the police department in the regulation and enforcement of parking on the city streets."

**Section 2.** Amend Chapter 2, Article VIII, by deleting Division 2 in its entirety and renaming Division 3 as Division 2, renumbering the sections within the newly created Division 2 beginning with Sec. 2-1396 and further amending the newly created Article VIII, Division 2 by:

a) replacing the term “parking department” with the term “traffic and parking department” as it appears in this Article;

b) replacing the Appointment term of the Traffic and Parking Executive Director of “one year” with “two years”; and

c) inserting the following responsibilities of the Executive Director immediately following Responsibilities (b)(5):

(6) Carry out traffic planning and policy development for the City, including providing review of all traffic modifications, parking changes, or other similar activities, whether regulatory or through construction

(7) Assist with implementation of the City's Complete Streets Policy and, in particular, the adoption of regulations favoring multi-modal transportation

(8) Oversee Residential Traffic Calming initiatives and other similar traffic programs

(9) Serve as the City lead on major state and local roadway and corridor improvement projects

(10) Plan, install, and oversee parking and transit related technology improvements

(11) Continue implementation of the existing comprehensive parking plan, updating it as necessary, including, but not limited to, parking meter control and regulation, resident parking programs, the creation of new parking, and the improvement or alteration of existing parking

(12) Staff the Traffic and Parking Commission

**Section 3.** This Ordinance shall take effect as provided by city charter.



## Dominick Pangallo

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**From:** Michael Caggiano <mike@michaelcaggiano.com>  
**Sent:** Tuesday, February 09, 2016 1:33 PM  
**To:** Alan Sullaway; Rinus Oosthoek; Elysia Alleman; J. P. Story; Tim Doggett; Jane Guy  
**Cc:** Dominick Pangallo  
**Subject:** Tomorrow night's City Council Meeting

Ladies and Gentlemen of the Parking Board,

I trust that you have all received an invitation to the Government Services Committee Meeting tomorrow evening.

Unfortunately I will not be able to attend the meeting due to prior commitments. If someone could please forward my regrets to the Committee I would appreciate it. I would hope that a few of you could attend the meeting.

I believe that we were unanimous in our view that the creation of a Parking and Traffic Commission would be more beneficial than the current Parking Board.

We have come a long way since I joined the Board in 1996. The City has grown and I think we did a damn good job of helping the Parking Department maintain a good product to the residents, business and visitors! I say let's keep moving forward. A Parking and Traffic Commission makes sense to me.

Thank you.

Michael Caggiano  
Chairman, Parking Board

Office 978-740-1080  
Fax 978-740-6736

## Ilene Simons

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**From:** Heather Famico  
**Sent:** Wednesday, February 10, 2016 3:54 PM  
**To:** Ilene Simons  
**Subject:** FW: traffic and parking commission

For public record

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**From:** Peg & Tim Doggett [thedoggetts@verizon.net]  
**Sent:** Wednesday, February 10, 2016 3:41 PM  
**To:** City Councilors  
**Subject:** traffic and parking commission

Councilors,  
I urge that you find this request lacking in necessity and reject it.

This motion is more to do with reducing the authority of the council than it is to do with delivery of service. In our type B form of government there are built in checks and balances between the legislative and administrative branches creating this commission further erodes that check and balance. This commission will have the authority amongst others to set rates and fines. Only elected officials should have that right.

Elected officials are Salem residents they represent us and are available to their constituents, they are subject to voter recall. Appointed commissioners are none of these.

Please reject this unnecessary expansion of bureaucracy.

Thank you,  
Tim Doggett  
9 Lynn Street.

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Please note the Massachusetts Secretary of State's office has determined that most emails to and from municipal officials are public records. FMI please refer to: <http://www.sec.state.ma.us/pre/preidx.htm>.  
Please consider the environment before printing this email.

# 45



# CITY OF SALEM

In City Council, January 14, 2016

**Ordered:**

That the Committee on Government Services co-posted with Committee of the Whole meet to discuss guidelines for cell sites. Invited: Bonnie Belair, Ryan Macione, City Engineer, City Electrician, Mayor or her designee and City Solicitor.

In City Council January 14, 2016  
Adopted

ALLESLE

CHERYL A. LAPOINTE  
CITY CLERK

## Wireless Facilities in the Public Right of Ways in the City of Salem

Legal Issues Arising from Requests for  
Small Cell and Distributed Antenna System  
(DAS) Attachments  
on Utility and Street Light Poles

### Small Cell and DAS Technology

- Small cells are single nodes, attached to a pole, usually for only 1 carrier who needs to increase their data network coverage capacity.
- Distributed Antenna System (DAS) is a network of multiple, spatially separate antenna nodes connected to a common source via fiber optic cable.
- Often located in public rights of way attached to utility poles or street lights.
- Are intended to supplement rather than supplant existing macro sites in the City.

## Federal Law Dictates Process to a Degree\*

- DAS and small cell installations are included as wireless “facilities” under federal law and applications for siting are subject to the deadlines (“shot clocks”) contained in Section 332(c)(7): 90 days for collocation and 150 days for new poles.
- Modifications of an existing eligible facility must be acted on within 60 days.

\*With certain exceptions for City’s right to manage the ROW and to control municipally owned property such as attachments to City owned street lights.

## Two Issues for City to Consider

- **Right to occupy the public right of way** granted by the City as a Grant of Location under Chapter 166.
- **Right to attach wireless facilities** to municipally owned property, such as traffic lights, street lights, other poles.
- Can also be subject to a “Use Agreement” detailing the City’s conditions for use of the public way.
- Can be granted as part of pole attachment or lease agreement.

## Differences Between the 2 Distinct Sets of Rights

- **Right to occupy the public Right of Way**
- Relates to the City's authority to manage the use and placement of facilities within the ROW. Does not matter who owns the poles or infrastructure upon which the facilities are placed.
- **Right to Attach wireless facilities to municipally owned property** (light poles, other municipal poles)
- Relates to City's rights as property owner and acting in a proprietary capacity.

## Right of Way (ROW) Rights

- City may not prohibit entry by telecommunications carriers in the public ROW. (47 U.S.C. 253 (a))
- City may manage the public ROW and obtain reasonable compensation on a non-discriminatory neutral basis, while balancing the needs of community/new providers /existing providers.
- M.G.L. Chapter 166 requires a public hearing process for a grant of location in the public way.

## City as Property Owner

- Federal laws and regulations do not affect City's rights to dictate the nature and scope of what it chooses to allow on City-owned street lights and poles provided its requirements do not act to prohibit wireless services in violation of Section 47 U.S.C. 253 (a).
- Federal and state telecommunications laws/regulations do not limit the City from charging a fee and requiring an agreement for attachments to City-owned property such as street lights in the public way.

## City Has Flexibility in Negotiating Use of Municipal Property or Facilities

- Use of municipal property or facilities such as light poles, street lights are not subject to Sections 253, 332 (c)(7) or 6409 (a).
- FCC confirmed in its Wireless Siting Order (WT Docket #13-328) that shot clocks and other requirements **do not apply** to leases of municipal property where the municipality is operating in a proprietary capacity.

## Model Ordinance/For Discussion Purposes Only

# Telecommunications Services and Pole Attachments in the Rights of Way

### § 12-300. Declaration of findings.

The City hereby declares as a legislative finding that the rights-of-way within the City limits:

A.

Are a unique and physically limited resource and are critical to the travel and transport of persons and property in the City; and

B.

Are intended for public uses and must be managed and controlled consistent with that intent and, among other provisions, the provisions of MGL c. 166, §§ 21 and 22; and can be partially occupied by the telecommunications facilities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and require adoption of the specific additional regulations established by this ordinance to equitably allocate resources, promote coordination of users, maximize available space, reduce maintenance and other costs to the City and the public, and facilitate entry of providers of telecommunications in the public interest.

### § 12-301. Applicability.

This ordinance shall apply only to telecommunications providers seeking to use the public rights-of-way, and shall have no application to other entities owning controlling facilities within the rights-of-way, including but not limited to electric, gas or water public utilities, or cable television system service providers that do not themselves engage in the provision of telecommunications services. The requirements of this ordinance shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or Massachusetts law, including such changes in applicable law as may be hereinafter enacted.

### § 12-302. Unlawful to operate without agreement.

It shall be unlawful for any person to construct, operate or maintain telecommunications facilities or to operate as a telecommunications provider by use of facilities in the rights-of-way in the City without an existing, valid telecommunications use agreement with the City and a Grant of Location (GOL) pursuant to MGL c. 166, §§ 21 and 22, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by ordinance. The above provision notwithstanding, public utilities owning and operating facilities within the rights-of-way that are utilized by third-party telecommunications providers but do not themselves provide telecommunications services shall not be required to obtain a telecommunications use agreement.

### § 12-303. Agreements nonexclusive.



The authority granted by the City in any use agreement shall be for nonexclusive use of the rights-of-way. The City specifically reserves the right to grant, at any time, such additional use agreements or franchises or other rights to use the rights-of-way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable laws.

§ 12-304. Nature of rights granted by any agreement.

Telecommunications use agreements shall not convey title, equitable or legal, in the rights-of-way, and shall give only the right to occupy rights-of-way, including a Grant of Location as appropriate, for the purposes and for the period stated in this ordinance and the individual use agreement. No agreement shall grant the right to use poles owned or controlled by the City of Salem or a third-party, without the consent of such owners, nor shall a use agreement excuse a provider from obtaining appropriate conduit access and/or pole attachment agreements before locating its facilities on street lights or poles owned or controlled by the City of Salem or by public utilities pursuant to MGL c. 166, § 25A. All use agreements shall be deemed to incorporate and be limited by the provisions of this ordinance.

§ 12-305. Term.

The term of a telecommunications use agreement shall be set out in the individual agreement but in no event shall be for a term of more than five years from its effective date.

§ 12-306. Telecommunications Use Franchise Fee.

Every telecommunications provider shall as compensation for the use of the rights-of-way pay a telecommunications use agreement franchise fee to the City as follows:

Pole Attachment Agreements and Fees

As a condition of any grant of location, an applicant seeking to attach telecommunications equipment to City-owned infrastructure, including street lights located within the public way, shall also be required to enter into a pole attachment agreement providing for the payment of an annual rental fee as follows:

§ 12-307. Application and application fee required.

A.

Consistent with applicable requirements of MGL c. 166, §§ 21 and 22, any person seeking to use the rights-of-way as a telecommunications provider, or seeking renewal of an existing use agreement to provide telecommunications or related services, shall submit a completed application for a "Grant Of Location For Telecommunications Use" on such form as approved by the City. All such applications shall be compliant with the requirements of federal law, including the Telecommunications Act, the Spectrum Act and the regulations thereunder.

B.

Each application shall be accompanied by a nonrefundable application fee in such amount as may be hereinafter established by the City, to reimburse the City's reasonable costs in the review and administration of any application filed under this ordinance.

§ 12-308. Application Procedures.

A.

Upon receipt of a completed and signed application, the City Clerk will forward it to the Director of Public Services, City Electrician and City Engineer for administrative review. Each shall promptly review the application, consult with other City departments as necessary, and make written recommendations concerning approval to the City Council and, if appropriate, shall include recommendations concerning conditions to be placed on the grant of location and supplemental instructions.

B.

Applications shall include at a minimum

1. Description of type of service to be provided; a list of all posts, poles or other supports of wires and location of proposed conduits and manholes in relation to the existing underground facilities;
2. A list of abutters' names and addresses
3. Drawings, dimensioned and to scale of the proposed attachment as installed on an existing street light or utility pole or the same with respect to proposed new "dummy" poles or enhancements of existing City-owned poles;
4. Detailed description of the types of aerial and underground facilities that the applicant intends to install;
5. Detailed route maps or plans showing the location of facilities to be installed within the rights-of-way, prepared by a professional engineer registered in the Commonwealth;
6. Construction schedule and maintenance plan;
7. Equipment specifications and radio frequency emission calculations for the location proposed;
8. The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate and plans to remediate the same; and
9. Executed pole attachment agreement. If applicant intends to seek pole attachments on City-owned poles or street lights, affirmation of intent to enter an agreement with the City and abide by the conditions set forth therein.

C.

The City Council shall review the application, any evidence presented at a Grant of Location (GOL) public hearing if a GOL is requested at the time of the application, as well as the recommendations received from the Director of Public Services, City Electrician and City Engineer and make a determination on the Application, taking into account the following factors:

1. Public safety and structural limitations;

2. Compatibility of attachments, including but not limited to, wires, antennas and other pieces of equipment;
3. Interference with City operation or infrastructure;
4. Adequacy of electric service and efficient use of scarce physical space, including potential collocation with the applicant responsible for obtaining its own source of electricity;
5. Existing regulatory restrictions on use and access of such facilities;
6. Existence of reasonable alternatives to the use of City poles and rights of way;
7. Aesthetic considerations; and
8. Other good cause shown.

D.

With respect to City-owned poles and street lights, the City may determine, in addition to the factors outlined above, the specifics, conditions and configuration of the pole attachment, including but not limited to size, weight and density. The attachment shall be in a color matching existing poles as directed by the City. No attachment shall be allowed on historically or architecturally significant poles owned by the City and/or located within the public right of way. The City further reserves the authority to deny or revoke a previous grant of location and license if the installation or a modification creates or results in double poles.

Defined terms.

**GRANT OF LOCATION or GOL**

Permission from the City granted to a telecommunications provider which seeks to construct a line in order to transmit such service upon, along, under or across a public way, including the wires, poles, piers, abutments or conduits necessary therefor, pursuant to MGL c. 166, § 22.

**PUBLIC UTILITY**

A gas or electric company providing regulated services pursuant to MGL c. 164, or a telephone company providing regulated services pursuant to MGL c. 166.

**RIGHTS-OF-WAY**

The surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for public uses and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as otherwise provided by applicable laws or pursuant to an agreement between the City and any such person or agency. "Rights-of-way" shall not include public property owned or leased by the City that is not intended for right-of-way use, including, but not limited to, municipal building property, parks, public works facilities, street lights and/or poles.

**TELECOMMUNICATIONS**

The transmission of intelligence within the Commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the

operation of all conveniences, appliances, instrumentalities, or equipment appertaining thereto, or utilized in connection therewith.

**TELECOMMUNICATIONS FACILITIES**

The cables, wires, lines, poles, piers, abutments, conduits, towers, wave guides, optic fiber, antennas, nodes and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing telecommunications. This definition includes all equipment associated with Small Cell and Distributed Antenna Systems (DAS) installations.

**TELECOMMUNICATIONS PROVIDER/PROVIDER**

A person granted a telecommunications use agreement and that person's agents, employees, lawful successors, transferees, or assignees, or any other person who constructs, operates or maintains telecommunications facilities or provides telecommunications services and/or personal wireless services by use of facilities in the rights-of-way, other than reseller service providers. Such term shall also include providers of internet access service, private carriage telecommunications services and dark fiber to the extent such offerings are not covered under a separate City grant of authorization. Such term shall not include public utilities that own poles, conduit and other facilities that are utilized by telecommunications providers but do not themselves provide telecommunications on a commercial basis.

**TELECOMMUNICATIONS SERVICE**

The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used.