CITY OF STOUGHTON, 381 E. Main Street, Stoughton, WI 53589

ORDINANCE OF THE COMMON COUNCIL	
Creating Chapter 63, Relating to Wireless Telecommunications Facilities in the Right-of-Way Committee Action: Fiscal Impact: None	
File Number: O -__ - 2019	**Date Introduced:**

The Common Council of the City of Stoughton does ordain as follows:

1. Chapter 63 of the City of Stoughton Code of Ordinances is created as provided in Exhibit A.
2. This ordinance shall be effective upon passage and publication pursuant to law.

Dates

Council Adopted:_____

Mayor Approved: _____ _____
Tim Swadley, Mayor

Published:_____

Attest:_____ _____
Holly Licht, City Clerk

Exhibit A

Chapter 63: WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

Sec. 63-1. – Definitions.

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

"Administrator" means the Director of Public Works or his or her designee.

"Application" means a formal request, including all required and requested documentation and information, submitted by an Applicant to the City for a wireless permit.

"Applicant" means a person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.

"Base Station" means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.

"Eligible Facilities Request" means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

"FCC" means the Federal Communications Commission.

"Right-of-way" means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the City exercises any rights of management and control or in which the City has an interest.

"Shot Clock" means a time limit imposed by state or federal law for City action on a permit application.

"Small Wireless Facility," consistent with 47 C.F.R. § 1.6002(l), means a facility that meets each of the following conditions:

(1) The structure on which antenna facilities are mounted:

i. is 50 feet or less in height, or

ii. is no more than 10 percent taller than other adjacent structures, or

iii. is not extended to a height of more than 50 feet or by more than 10 percent

above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;

(2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration;

(5) The facility is not located on Tribal lands; and

(6) The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified by federal law.

"Support Structure" means any structure capable of supporting wireless telecommunications equipment.

"Tower" means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

"Underground areas" means those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

"Utility Pole" means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.

"Wireless Infrastructure Provider" means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.

"Wireless Permit" or "Permit" means a permit issued pursuant to this Chapter and authorizing the placement, modification or replacement of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

"Wireless Service Provider" means an entity that provides wireless services to end users.

"Wireless Telecommunications Equipment" means equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

"Wireless Telecommunications Facility" or "Facility" means a facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

Definitions in this Chapter may contain quotations or citations to 47 C.F.R. §§ 1.6100 or 1.6002 or Wis. Stat. § 66.0414. In the event that any referenced section is amended, creating a conflict between the definition as set forth in this Chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

Sec. 63-2. – Purpose.

In the exercise of its police powers, the City has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the City with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way. These standards strive to be consistent with the City's obligations to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The City recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the City. The City also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. §§ 66.0404, 66.0414, 182.017, and 196.58. This Chapter shall be interpreted consistent with those provisions.

Sec. 63-3. – Scope.

(a) *Applicability.* Unless exempted by Section 3(b), below, every person who wishes to place or replace a wireless telecommunications facility in the right-of-way, or modify an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this Chapter.

(b) *Exempt Facilities.* The provisions of this Chapter (other than Sections 10-14) shall not be applied to applications for the following:

(1) Installation of a mobile cell facility (commonly referred to as "cell on wheels" or "cell on truck") for a temporary period in connection with an emergency or

event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

(2) Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

(3) Placement or modification of a wireless telecommunications facility by City staff or any person performing work under contract with the City.

(4) Installation of a micro wireless facility, as defined in Wis. Stat. § 66.0414(1)(p), on a cable between existing utility poles in compliance with the National Electrical Safety Code.

Sec. 63-4 – Nondiscrimination.

In establishing the rights, obligations, and conditions set forth in this Chapter, it is the intent of the City to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

Sec. 63-5. – Administration.

(a) *Administrator.* The Administrator is responsible for administering this Chapter.

(b) *Powers.* As part of the administration of this Chapter, the Administrator may:

(1) Interpret the provisions of this Chapter.

(2) Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.

(3) Collect any fee required by this Chapter.

(4) Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.

(5) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal and state laws and regulations.

(6) Issue notices of incompleteness or requests for information in connection with any wireless permit application.

(7) Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.

(8) Coordinate and consult with other City staff, committees, and governing bodies to ensure timely action on all other required permits under Section 6(b)(8) of this Chapter.

(9) Subject to appeal as provided in Section 8(e) of this Chapter, determine whether to grant, grant subject to conditions, or deny an application.

(10) Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

Sec. 63-6. – Application.

(a) *Format.* The applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application, as well as any amendments or supplements to the application or responses to requests for information regarding an application, to the Administrator. An application is not complete until both the paper and electronic copies are received by the Administrator.

(b) *Content.* In order to be considered complete, an application must contain:

(1) The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.

(2) A statement of which Shot Clock or Shot Clocks apply to the application and the reasons the chosen shot clocks apply.

(3) A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to: detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and description of the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each facility.

(4) Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant

is submitting an application to the City for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include:

(i) the proposed location of the facility,
(ii) a description and scale image of the proposed facility, and
(iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

(5) A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.

(6) To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.

(7) A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.

(8) Payment of all required fees.

(9) If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the City from complying with any deadline for action on an application.

(10) If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the City. Before and after 360-degree photo simulations must be provided, with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

(11) The signature of an authorized representative of the applicant.

(c) *Waivers.* Requests for waivers from any requirement of this Section 6 shall be made in writing to the Administrator. The Administrator may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the City will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.

(d) *Fees.* Applicant must provide an application fee, equal to the maximum allowable under Wis. Stat. § 66.0414(3)(d), and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants.

(e) *Public Records.* Applications are public records that may be made publicly available pursuant to state and federal public records law. The applicant may designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each such portion accordingly. In the event the City receives a request for disclosure of designated portions of the application, the City shall inform the applicant about the request so that the applicant may take action to try to prevent disclosure. The City shall not be required to take any other action or incur any costs to protect any portion of any application from disclosure.

Sec. 63-7. - General Standards.

(a) *Generally.* Wireless telecommunications facilities shall meet the minimum requirements set forth in this Chapter, in addition to the requirements of any other applicable law or regulation.

(b) *Decisions.* The decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the extent required to avoid the prohibition.

(c) *Standards.*

(1) Wireless telecommunications facilities shall be installed and modified in a manner that:

(A) Ensures that placement of facilities on existing structures is within the tolerance of those structures;

(B) Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;

(C) Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;

(D) Ensures that the City bears no risk or liability as a result of the installations; and

(E) Ensures that applicant's use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(2) Wireless telecommunications facilities shall meet the following aesthetic standards:

(A) Location

1. The following locations, in the order listed, are the preferred locations for installation of facilities in public rights-of-way:

   i. Industrial areas; and

   ii. Commercial areas

2. Applicants shall avoid installation of facilities in residential neighborhoods, designated open space, conservation areas or historic districts, unless applicant provides sufficient proof to the public works director that such installation:

   i. Is essential to meet the service demands of the carrier, and no other alternative co-location, existing development or utility facility site, or type of support structure is feasible; and

   ii. The use of a new support structure, tower or utility pole for the proposed facility by itself or in combination with other existing, approved, and proposed facilities will avoid or minimize adverse effects related to land use compatibility, visual resources, and public safety.

(B) Collocation

1. Subject to the provisions of this section, collocation of facilities is preferred over new support structures if it can be accomplished in a way that better complements the character of the surrounding area.

2. Collocation on facilities or support structures not owned by the City is subject to the following:

    i. Where an existing facility or support structure can potentially accommodate collocation of a new wireless facility, collocation will be required unless:

        1. The applicant submits substantial evidence supporting the unsuitability of the collocation;

        2. The owner of the existing facility or support structure is unwilling to accommodate the applicant's equipment and cannot be required to cooperate; or

        3. The director of Public Works determines that installing a new support structure or collocation with a City facility is preferable to collocation with another facility or support structure.

    ii. Authorization for collocation on a facility or support structure not owned by the City will be voided if the facility or support structure is destroyed, removed, relocated, or replaced, unless:

        1. Where an existing facility or support structure can potentially accommodate collocation of a new wireless facility, collocation will be required unless:

            a. The owner of the collocated facility obtains a new right-of-way use permit; or

            b. The facility or support structure accommodating the collocation is replaced with a facility or support structure comparable in size, mass, appearance, and placement, as determined by the director of Public Works.

(C) Spacing

1. A support structure, tower, or utility pole for a wireless facility must be at least 25 feet from any other support structure in a public right-of-way. Applicant shall demonstrate this with a detailed map of all such existing structures within 300 feet of applicant's planned structures.

2. A support structure, tower, or utility pole for a wireless facility must be at least 2 feet from the curb or nearest traffic lane.

3. A support structure, tower, or utility pole for a wireless facility may not be located along the frontage of any historic building.

4. The Director of Public Works may only approve an exception to any of these requirements if the applicant submits substantial evidence demonstrating that the requirement would amount to an effective prohibition on the provision of personal wireless service.

(D) Height

1. The height of a support structure, tower, or utility pole in the right-of-way may not exceed the greater of 50 feet above ground level or ten percent taller than the tallest existing support structure, tower, or utility pole that is in place on the effective date of this ordinance and that is located in the same right-of-way and within 500 feet of the facility that is the subject of the application.

2. The height of a small wireless facility in the right-of-way may not exceed the greater of 50 feet above ground level or ten percent taller than the existing support structure, tower, or utility pole on which the small wireless facility is located.

3. Equipment mounted to support structures must not interfere with or create a hazard to pedestrian or vehicular traffic and must be a minimum of 10 feet above any pedestrian or bicycle thoroughfare and a minimum of 14 feet above any traffic lane.

(E) Undergrounding

1. To conceal the non-antenna equipment, applicants shall install all

non-antenna equipment underground when proposed in an area where utilities or other equipment or in the right-of-way is primarily located underground. In all other areas, applicants shall underground its non-antenna equipment to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services. Nothing in this subsection is intended to require the applicant to install any electric meter required by the applicant's electrical service provider underground.

2. To the extent that the equipment cannot be placed underground as required, applicants shall install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The City may require landscaping as a condition of approval to conceal ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a street light, traffic signal, utility pole or other similar infrastructure in the public right-of-way. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:

    (i) Self-Contained Cabinet or Shroud. The equipment shroud or cabinet shall contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment shall be concealed from view.

    (ii) Concealment. The City may require the applicant to incorporate concealment elements into the proposed design, including but not limited to public art displayed on the cabinet, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.

(F) Concealment. Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, meet design requirements and ensure compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law:

1. A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.

Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

2. Wireless facilities shall not exceed the width of an existing structure.

3. Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.

4. Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;

5. Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.

6. Facilities must not be illuminated, except in accordance with state or federal regulations or if incorporated as part of a street light pole.

7. No facility may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.

8. Tree "topping" or the improper pruning of trees is prohibited. Any proposed pruning of trees, shrubs, or other landscaping already existing in the right-of-way must be noted in the application and approved by the City.

(3) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.

(4) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.

(d) *Standard Permit Conditions.* All wireless permits under this Chapter are issued subject to the following minimum conditions:

(1) Compliance. The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.

(2) Term. A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires.

(3) Contact Information. The permit holder shall at all times maintain with the City accurate contact information for the permit holder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.

(4) Emergencies. The City shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.

(5) Indemnification. A permit holder shall indemnify and hold harmless the City against any and all liability and loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of right-of-way by the permit holder or its employees, agents, or contractors arising out of the rights and privileges granted under this chapter. A permit holder has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents.

(6) Adverse Impacts on Adjacent Properties. The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.

(7) General Maintenance. The wireless communications facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

(8) Graffiti Removal. All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the City.

(9) Relocation. At the request of the City pursuant to Section 10 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.

(10) Abandonment. The permit holder shall promptly notify the City whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section 11 of this Chapter.

(11) Restoration. A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section 12 of this Chapter.

(12) Record Retention. The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.

(13) Radio Frequency Emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions. Failure to comply with such regulations shall be treated as a material violation of the terms of the permit.

(14) Certificate of Insurance. The permit holder must provide a certificate of insurance sufficient to demonstrate to the satisfaction of the Administrator that the permit holder has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.

(15) Use Fee. The permit holder must pay the City an annual fee to use the right of way ("Use Fee"). The Use Fee shall equal the maximum fee allowable under Wis. Stat. § 66.0414(2)(c). The permit holder shall be invoiced for the first use fee on the date the permit is issued, prorated based on the proportion of the calendar year then remaining. Subsequent invoicing shall be prospective, and occur each January. If the permit holder fails to pay the use fee within thirty days after it is due, the permit holder shall pay interest of two percent per month on the amount past due, unless the imposition of such interest is prohibited by law.

Sec. 63-8. - Application Processing and Appeal.

(a) *Rejection for Incompleteness.* Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.

(b) *Conflicting applications*. When multiple applicants apply to place wireless telecommunications facilities in the same location, or when two applications otherwise conflict, the Administrator will first review the application that was first received by the Administrator. After issuing a written decision on the first application pursuant to Section 8(d), the Administrator will review subsequent conflicting applications in the order in which each was received.

(c) *Processing Timeline.* Wireless permit applications (including applications for other permits under Section 6(b)(8) necessary to place or modify the facility) and appeals will be processed in conformity with the Shot Clocks set forth in state, local, and federal law, as amended.

(d) *Decision Procedure.* No wireless permit application may be approved, approved with conditions, or denied, without the concurrence of both the Administrator and the Director of Stoughton Utilities.

(e) *Written Decision.* If an application is denied (or approved with conditions beyond the standard permit conditions set forth in Section 7(d)), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record. An applicant may amend and resubmit an application within 30 days of receipt of such a written decision, without paying another application fee. The City must approve or deny such an amended application within 30 days of receipt.

(f) *Appeal to City Council.* Any person adversely affected by the decision of the Administrator may appeal that decision through the administrative review procedures in Stoughton Code of Ordinances Chapter 2. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.

(g) *Deadline to Appeal.*

(1) Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the Administrator.

(2) All other appeals not governed by Section 8(e)(1), above, must be filed within ten business days of the written decision of the Administrator, unless the Administrator extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.

(h) *Decision Deadline.* All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable Shot Clock.

Sec. 63-9. - Expiration and Revocation.

(a) *Expiration.* A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. Upon expiration of the wireless permit, the permit holder must either:

(1) Remove the wireless telecommunications facility; or

(2) Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal application is acted on by the City and any appeals from the City's decision are exhausted.

(b) *Revocation for Breach.* A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within 30 days of receipt of written notice from the City. All costs incurred by the City in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.

(c) *Failure to Obtain Permit.* Unless exempted from permitting by Section 3(b) of this Chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the City. All costs incurred by the City in connection with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.

Sec. 63-10. – Relocation.

Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the City requests such removal and relocation. The City may make such a request to prevent the facility from interfering with: a present or future City use of the right-of-way; a public improvement undertaken by the City; an economic development project in which the City has an interest or investment; the public health, safety, or welfare; or the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

Sec. 63-11. – Abandonment.

(a) *Cessation of Use.* In the event that a permitted facility within the right-of-way is not in

use for a continuous period of 60 days or longer, the permit holder must promptly notify the City and do one of the following:

(1) Provide information satisfactory to the Administrator that the permit holder's obligations for its facilities under this Chapter have been lawfully assumed by another permit holder.

(2) Submit to the Administrator a proposal and instruments for dedication of the facilities to the City. If a permit holder proceeds under this Section 11(a)(2), the City may, at its option:

(A) Accept the dedication for all or a portion of the facilities;

(B) Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Section 12; or

(C) Require the permit holder to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Section 12.

(3) Remove its facilities from the right-of-way and perform the required restoration under Section 12 within one year, unless the Administrator waives this requirement or provides a later deadline.

(b) *Abandoned Facilities.* Facilities of a permit holder who fails to comply with Section 11(a) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option:

(1) Abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;

(2) Take possession of the facilities; and/or

(3) Require removal of the facilities by the permit holder or the permit holder's successor in interest.

Sec. 63-12. – Restoration.

In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Section 10), the permit holder must restore the right-of-way to its prior condition in accordance with City specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this

Section 12, the City at its option may do such work. In that event, the permit holder shall pay to the City, within 30 days of billing therefor, the cost of restoring the right-of-way.

Sec. 63-13. - Placement on City-Owned or City-Controlled Structures.

The City may negotiate agreements for placement of wireless telecommunications facilities on City-owned or City-controlled structures in the right-of-way. The agreement shall specify the compensation to the City for use of the structures. The person or entity seeking the agreement shall reimburse the City for all costs the City incurs in connection with its review of and action upon the request for an agreement.

Sec. 63-14. – Severability.

If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this Chapter, which shall remain in full force and effect.