

FIRST READING: August 6, 2019

SECOND READING: August 20, 2019

ORDINANCE NO. 6327

**AN ORDINANCE AMENDING SECTION 13.12.200 OF THE LOVELAND
MUNICIPAL CODE REGARDING POLE ATTACHMENTS**

WHEREAS, in 2017, the Colorado General Assembly passed Senate Bill 17-1193 in order to facilitate the deployment of small cell wireless facilities in the public rights-of-way. Such legislation was enacted in C.R.S. § 29-28-401 to 404 and C.R.S. § 38-5.5-102 to 109 (“State Statutes”); and

WHEREAS, the State Statutes require municipalities to permit the deployment of small cell wireless facilities in public rights-of-way, including by attachment to City-owned structures such as utility poles and street light poles, subject to limited regulation by the City; and

WHEREAS, the Federal Communications Commission (“FCC”) has promulgated certain regulations intended to preempt local regulations regarding the deployment of small cell wireless facilities; and

WHEREAS, the City has determined that certain amendments to the Loveland Municipal Code are necessary to regulate small cell wireless facilities in the public rights-of-way to the extent permitted by the State Statutes and federal law; and

WHEREAS, the Loveland Municipal Code currently addresses wireless communications facilities, including small cell wireless facilities, in two locations: Title 18, which contains the City’s Unified Development Code (“UDC”) and Title 13. The UDC concerns wireless communication facilities on private property, rather than within the public rights-of-way, while Title 13 concerns wired and wireless attachments to City-owned poles; and

WHEREAS, the City Council desires to consolidate the provisions in the UDC and Title 13 regarding wireless communications facilities with new provisions regarding the public rights-of-way into one new Title 14 – Wireless Communications Code creates a more accessible code for the City, its citizens, and the wireless communications industry; and

WHEREAS, as a result of such consolidation, Title 13 must be amended to remove provisions regarding wireless communication facilities. The City Council finds that such amendment is in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 13.12.200 of the Loveland Municipal Code shall be amended to read in full as follows:

13.12.200 Pole Attachments.

A. Definitions:

Assigned space means space on the poles that can be used, as defined in the City's electric standards and all other standards adopted in Title 18 for the attachment or placement of wires, cables, and associated equipment for the provision of communications facilities or electric service. The neutral zone or safety space is not considered assigned space.

Attachments means each point of contact between licensee's communications facilities and the poles, whether placed directly on the poles or overlashed onto an existing attachment, but does not include a riser or a service drop attached to a single pole where licensee has an existing attachment on such pole. Attachment(s) shall include, without limitation, the following points of strain: down guys, main line attachments, and any other attachment that could shorten the life cycle of the pole.

Capacity means the ability of a pole segment to accommodate an additional attachment based on applicable standards, including space and loading considerations.

Climbing space means that portion of a pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access, and work on City facilities and equipment.

Common space means space on the poles that is not used for the placement of wires or cables but which jointly benefits all users of the poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric utility facilities.

Communications facilities means wire or cable facilities including, but not limited to, fiber optic, copper, and/or coaxial cables or wires utilized to provide communications service including any and all associated equipment. The term communications facilities does not include wireless antennas, small cell facilities, receivers, or transceivers.

Overlash means to place an additional wire or cable communications facility onto an existing attachment owned by licensee.

Pole means a pole owned by the City used for the distribution of electricity and/or communications service that is capable of supporting attachments for communications facilities.

B. Pole Attachments in general.

1. No one may attach communication facilities to a pole without obtaining a license and permits for each pole. Unauthorized attachments shall be issued a penalty and shall come into compliance with this section.
2. All attachments to electrical facilities, poles, or towers owned by the City must be licensed by the Water and Power Department. Applications for attachments in the right-of-way must be submitted to the Public Works Department for initial review. The Water and Power Department (hereafter "Department") will provide final review and issue the license and permits for each pole approved for an attachment.

3. Any modifications or additions necessary to make a pole ready for safe attachment will be the responsibility of the licensee, as well as all associated design and engineering or other costs. Licensee is responsible for payment for all work performed by the City to accommodate the applicant's attachments.
4. The City may refuse to issue a permit where safety concerns cannot be adequately addressed through engineering.
5. A permit is authorization for attachment to specific poles, one for each pole or overlash.
6. One license application may be submitted for multiple pole attachments.
7. The City will issue a permit only when the City determines, in its sole judgment, exercised reasonably, that the pole has sufficient capacity to accommodate the request safely.

C. Annual Fees

1. Fees shall be published in the Water and Power Schedule of Rates, Charges and Fees.
2. Fees will be charged annually for all attachments. The City shall invoice annually for the attachment fee, for a period that shall conclude each December 31. All attachments shall comply with all applicable standards. Attachments, overlash, or other components shall not interfere with the operation of any City facilities. Any changes or work needed to safely attach to a pole is the responsibility of the applicant.

D. Permit Application Process

An applicant for any attachment to any City utility pole shall file a written application on forms furnished by the City.

1. An applicant for a license to attach to any poles or other power utility facility shall submit a written request to perform a pre-construction inspection. The request must include a preliminary route description and minimum design review information.
2. Following a pre-construction inspection, the applicant shall submit a completed permit application that includes route map, utility pole number(s), pole height and class, guy attachments, attachment height, number of inches below utility while maintaining clearance, span length for each attachment, inches sag, ground clearance, and recommendations on work required to allow the pole to safely support the attachment.
3. The application must include an affirmative statement that the applicant or its contractor is not delinquent in payments due the City on prior work.
4. The applicant must include or provide copies of all permits, licenses, or easements (including required insurance, deposits, bonding, and warranties) required to do the proposed work and to work in the rights-of-way, if licenses or permits are required under the laws of the United States, the State of Colorado, any other political subdivision, or the ordinances or regulations of the City.

5. Applicants shall update any new information on permit applications within ten days after any material change occurs.
6. Applicants seeking multiple attachments may submit one application for a license and include permit applications for each pole or overlash. Applicants will receive permits for each pole or overlash approved for attachment deemed to be safe after any modifications or construction in accordance with standards adopted by the City.
7. The City will review recommendations from the inspection and the application and discuss any issues or changes needed with the applicant.
8. Upon finalization of a written agreement, the City will work with the applicant to perform any work needed for installation.
9. The applicant's professional engineer or City-approved employee shall submit written certification that he/she completed a post-construction inspection and that the installation was done in accordance with the provisions of the permit.

E. Specifications

1. When a permit is issued, the licensee agrees to install and maintain attachments in accordance with all applicable standards and in accordance with a pole attachment agreement.
2. For any work not performed by the City, licensee shall comply with the insurance requirements set forth in Section 12.16.070.

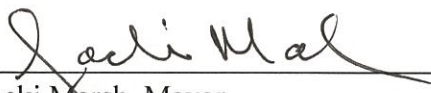
F. Abandonment and Removal

1. At its sole expense, the licensee shall remove any of its attachments or any part thereof that becomes nonfunctional, creates a safety hazard, violates any provision of applicable law, or violates the licensee's pole attachment agreement. Licensee shall remove such attachments or parts thereof within sixty days of written notification by the City that an attachment must be removed due to becoming nonfunctional or a safety hazard.
2. If the City desires at any time to abandon, remove, or underground any utility facilities to which licensee's communications facilities are attached, the City shall provide licensee notice in writing at least sixty days prior to the date on which it intends to abandon or remove such facilities, and licensee shall remove its communications facilities at its sole cost and expense within that time period. The City may grant an option to purchase the pole in its sole discretion.
3. Failure to pay the annual fee shall be considered abandonment. The City shall issue a notice to remove the attachment(s) if such fee is more than sixty days past due.
4. Licensee may surrender any permit or license for attachment(s) and remove them from affected poles. Licensee must notify the City of the plan for removal, including the name of the party performing the work and dates and times when such work will be performed.

5. If licensee abandons communications facilities or surrenders its license and fails to remove its attachments in the time frame set forth by the City, the City shall have the right to remove licensee's attachments at licensee's expense.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 20th day of August, 2019.



Jacki Marsh, Mayor

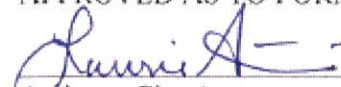
ATTEST:



City Clerk



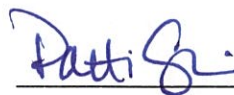
APPROVED AS TO FORM:



Assistant City Attorney

Ordinance 6327

I, Patti Garcia, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on August 6, 2019 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 10, 2019 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on August 24, 2019.



City Clerk

City Clerk

Effective Date: September 3, 2019

