

**STATEMENT OF CODE COMPLIANCE
CONDITIONAL USE APPLICATION
AT&T WCF—SN4998 QUILCEDA**

Submitted to the City of Marysville, WA
Planning Department

AT&T's application (the "Application") for a new wireless communication facility ("WCF" and/or "Facility") in the Community Business (CB) zone is subject to and complies with the following applicable provisions of the City of Marysville's Code ("MMC"), which are addressed in this Statement of Code Compliance in the following order:

Title 17-Zoning

- I. **COMMUNITY BUSINESS ZONE**
 - **Chapter 22C.020.060 Permitted Uses**

- II. **WCF DEVELOPMENT & DESIGN REGULATIONS**
 - **Chapter 22C.250 Wireless Communications**

- III. **REVIEW PROCEDURES**
 - **Chapter 22G.010.430 Conditional Use Permit**
 - **Section 17.82.060 Application Requirements**
 - **Section 17.82.080 Findings of Fact by Planning Commission**

PLEASE NOTE: AT&T's responses to the above referenced criteria are indicated below each applicable provision in ***bold italicized blue text***. Any reference to an "Attachment" is in reference to an attachment included in AT&T's application for the proposed Facility.

I. COMMUNITY BUSINESS ZONE
22C.020.060 Permitted uses.

Specific Land Use	NB	CB
Wireless communication facility (32)	P, C	P, C

Notes:

(32) All WCFs and modifications to WCFs are subject to Chapter 22C.250 MMC including but not limited to the siting hierarchy, MMC 22C.250.060. WCFs may be a permitted use or a CUP may be required subject to MMC 22C.250.040.

Applicant Response: AT&T is proposing a new wireless communication facility on a parcel zoned Community Business Zone. Accordingly, a Conditional Use Permit is required for the proposed Facility.

II. WCF DEVELOPMENT & DESIGN REGULATIONS

22C.250.040 Wireless communication facilities – Permit required.

The following table summarizes the types of proposal and required land use approvals. All proposals are subject to the siting hierarchy requirements of this chapter.

Amateur Radio Antennas	Combined on Existing WCF	Concealed Attached WCF	Concealed Co-location	Flush- or Nonflush-Mounted Antenna on Existing Antenna Support Structure	New Concealed Antenna Support Structure	Small Wireless Facility	WCF Consolidation
P2	P1 C	P1, 3 C	P1 C	P1 C	C	P4	C

P – Permitted Use. The use is allowed subject to the requirements of this code.

C – Conditional Use Permit. The use is allowed subject to the conditional use review procedures and requirements of this code.

Notes:

1. If the proposal does not extend the height of a structure outside the public right-of-way by more than 40 feet,

and the structure is in compliance with the maximum allowed WCF height for the zone, it is demonstrated that the proposal is consistent with any previous relevant approval conditions.

2. Amateur radio antennas are permitted subject to MMC 22C.250.090.
3. Concealed attached WCFs proposed within the public right-of-way are subject to MMC 22C.250.070(3).
4. Small wireless facilities are permitted within public right-of-way in all zones subject to the standards outlined in this chapter. Small wireless facilities are not subject to MMC 22C.250.050 through 2 2C.250.080.

Applicant Response: AT&T is proposing a new concealed antenna support structure and is applying for a conditional use permit.

22C.250.050 Wireless communication facilities – Application requirements.

In addition to any information required for CUP, ROW permit, or building permit review, an application for new WCFs or modifications to WCFs that require city approval shall provide the following information:

- (1) A site plan showing existing and proposed WCFs, access, base station, ancillary structures, warning signs, fencing, landscaping and any other items necessary to illustrate compliance with the development standards of this chapter.

Applicant Response: Please see Attachment 4-Zoning drawings, page sp-1 & c-1.

- (2) A stamped statement by a state of Washington registered professional engineer that the support structure shall comply with EIA/TIA-222-G (as amended), and the allowable wind speed for the applicable zone in which the facility is located, and that describes the general structural capacity of any proposed WCF(s), including:

- (a) The number and type of antennas that can be accommodated;
- (b) The basis for the calculation of capacity; and

Applicant Response: Tower and foundation drawings with structural calculation that show the number of antennas that can be accommodated and the basis for the calculation of capacity will be submitted with the building permit application. AT&T respectfully requests that this be made a condition of approval.

- (c) A written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standards.

Applicant Response: Please see Attachment 5-NIER Report

Some or all of the requirements listed in this subsection may be waived for applications for attachments to utility poles, provided a letter is submitted from the appropriate utility agency accepting responsibility for design of the structure.

- (3) A report by the applicant that includes a description of the proposed WCF, including height above grade, justification for the proposed height of the structure and evaluation of alternative designs which might result in lower heights, materials, color, lighting, and information demonstrating compliance with siting hierarchy.

Applicant Response: Please see Attachment 6-AT&T Radio Frequency (RF) Justification for

justification of requested height. It was determined that camouflaging the monopole as a pine tree (Monopine) would allow the proposed facility to best blend with its background and be the least intrusive, visually.

(4) Where a permit for an attachment or co-location is required, the application shall also include the following information:

Applicant Response: AT&T is not applying for a permit for an attachment or co-location and the remainder of this subsection has been intentionally omitted.

(5) A detailed visual simulation of the wireless communication facility shall be provided along with a written report from the applicant, including a map showing all locations where an unimpaired signal can be received for that facility (propagation map).

Applicant Response: Please see Attachment 7-Photo Simulations for the visual simulation and Attachment 6- AT&T Radio Frequency (RF) Justification for the propagation map.

(6) If applicable, approved franchise agreement, or completed franchise agreement application and related fees.

Applicant Response: Not applicable.

(7) Other information as the director of community development may reasonably require.

Applicant Response: Additional information will be provided as requested.

(8) Fees for review as established by the city's most current fee resolution.

Applicant Response: Fees will be paid upon invoicing.

The community development director may release an applicant from having to provide one or more of the pieces of information on this list upon a finding that in the specific case involved said information is not necessary to process or make a decision on the application being submitted. (Ord. 3125 § 4 (Exh. C), 2019; Ord. 2852 § 10 (Exh. A), 2011).

22C.250.060 Wireless communication facilities – Siting hierarchy.

Siting of antenna or support structures shall adhere to the siting hierarchy of this section. The order of ranking for antenna or antenna support structures, from highest to lowest, shall be 1, 2, 3, 4. Where letters (a, b) are present, a is preferable to b. Where a lower ranking alternative is proposed, the applicant must submit relevant information including but not limited to an affidavit by a licensed radio frequency engineer demonstrating that despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranking options are not technically feasible or justified given the location of the proposed wireless communications facility and network need.

Example: A new facility meeting the definition of a concealed consolidated WCF is proposed; the applicant demonstrates that the new facility cannot be sited under hierarchy (1)(a) through (1)(b). The applicant then demonstrates the new facility cannot be sited under hierarchy 2. The applicant then moves to hierarchy 3 and is able to propose a site.

1	<p>Co-location with existing antenna support structure:</p> <p>a. That requires no increase in pole or structure height.</p> <p>b. That requires an increase in pole or structure height, which shall comply with MMC 2 2C.250.080(3).</p>
2	<p>New concealed antenna support structure or concealed consolidation:</p> <ul style="list-style-type: none"> • On developed, improved sites in nonresidential zoning districts; or • On publicly owned land. Concealed attached WCF: <ul style="list-style-type: none"> • Within public parks, public open spaces, and on other publicly owned land; or • Within public rights-of-way; or • Within nonresidential zoning districts or residential zoning districts on lots not used for single-family residential purposes.
3	<p>Concealed consolidations:</p> <p>a. In nonresidential zoning districts.</p> <p>b. In residential zoning districts on lots not used for single-family residential purposes.</p>
4	<p>New concealed antenna support structure:</p> <p>a. In nonresidential zoning districts.</p> <p>b. In residential zoning districts on lots not used for single-family residential purposes.</p>

The community development director may allow the siting of a facility in a location at a lower position in the hierarchy without demonstration that higher ranking options are not technically feasible or justified, provided the applicant demonstrates that the proposed facility location would result in a lesser visual/aesthetic impact and better meets the purposes of this chapter. (Ord. 3125 § 4 (Exh. C), 2019; Ord. 2852 § 10 (Exh. A), 2011).

Applicant Response:

Siting Priority 1:

: There are no collocation opportunities on existing antenna support structures in or adjacent to the search ring, or within the 1/4 mile required by code. In the interest of providing broad information to the community, there are two towers .38 miles from the proposed site, one owned by Snohomish Public Utility District, which would not allow a new collocation, and one owned by American Tower Company. AT&T is already deployed on the ATC tower.

Siting Priority 2: A new facility meeting the definition of a new concealed antenna support structure is proposed on a developed site, improved with a carwash in the CB zoning district, a nonresidential zoning district, is proposed, thus meeting the criteria of priority location 2. Please see Attachment 8-Affidavit of Siting Hierarchy.

22C.250.070 Wireless communication facilities – General requirements.

(1) Co-located or combined facilities shall comply with the following requirements:

Applicant Response: AT&T is proposing a new concealed antenna facility and this subsection does not apply.

(2) Concealed attached WCFs outside of the public ROW shall comply with the following requirements:

Applicant Response: AT&T is proposing a new concealed antenna facility and this subsection does not apply.

(3) Concealed attached WCFs proposed within the public right-of-way shall comply with the following requirements:

Applicant Response: AT&T is proposing a new concealed antenna facility and this subsection does not apply.

(4) Concealed antenna support structures shall comply with the following requirements:

(a) Upon application for a new concealed antenna support structure, the applicant shall provide a map showing all existing antenna support structures or other suitable nonresidential structures located within one-quarter mile of the proposed structure with consideration given to engineering and structural requirements.

Applicant Response: Please see Attachment 6-AT&T Radio Frequency (RF) Justification.

(b) No new antenna support structure shall be permitted if an existing structure suitable for attachment of an antenna or co-location is located within one-quarter mile, unless the applicant demonstrates that the existing structure is physically or technologically unfeasible, or is not made available for sale or lease by the owner, or is not made available at a market rate cost, or would result in greater visual impact. The burden of proof shall be on the applicant to show that a suitable structure for mounting of antenna or co-location cannot be reasonably or economically used in accordance with these criteria.

Applicant Response: There are no existing antenna support structures within a ¼ mile radius of the proposed site. There are no roof-top structures within the search ring that provide the height necessary to achieve the coverage objective or that received favorable responses from the landowners.

(c) In residential districts, new concealed antenna support structures shall only be permitted on lots whose principal use is not single-family residential, including but not limited to schools, churches, synagogues, fire stations, parks, and other public property.

Applicant Response: AT&T 's proposed facility is in the CB zone and this subsection does not apply.

(d) To the extent that there is no conflict with the color and lighting requirements of the Federal Communications Commission and the Federal Aviation Administration for aircraft safety purposes, new antenna support structures shall be concealed as defined by this title and shall be configured and located in a manner to have the least visually obtrusive profile on the landscape and adjacent properties.

Applicant Response: The proposed facility will be camouflaged as a pine tree to blend with the surrounding trees. Please see Attachment 7-Photo Simulations and Attachment 4-Zoning Drawings.

(e) New concealed antenna support structures shall be designed to complement or match adjacent structures and landscapes with specific design considerations such as architectural designs, height, scale, color, and texture and designed to blend with existing surroundings to the extent feasible. This shall be achieved through the use of compatible colors and materials, and alternative site placement to allow the use of topography, existing vegetation or other structures to screen the proposed concealed antenna support structure from adjacent lands containing, in descending order of priority: existing residences, public parks and open spaces, and public roadways.

Applicant Response: The proposed facility will be camouflaged as a pine tree to blend with the surrounding trees. Please see Attachment 7-Photo Simulations and Attachment 4-Zoning Drawings.

(f) At time of application the applicant shall file a letter with the department, agreeing to allow co- location on the tower. The agreement shall commit the applicant to provide, either at a market rate cost or at another cost basis agreeable to the affected parties, the opportunity to co-locate the antenna of other service providers on the applicant's proposed tower to the extent that such co- location is technically and structurally feasible for the affected parties.

Applicant Response: Please see Attachment 9-Collocation Agreement Letter

(g) All new concealed antenna support structures up to 60 feet in height shall be engineered and constructed to accommodate no less than two antenna arrays. All concealed antenna support structures between 61 feet and 100 feet shall be engineered and constructed to accommodate no less than three antenna arrays. All concealed antenna support structures between 101 and 140 feet shall be engineered and constructed to accommodate no less than four antenna arrays.

Applicant Response: The proposed tower is 140 feet and has been designed to accommodate three additional carriers as shown on page C-3, Attachment 4-Zoning Drawings.

(h) Those providing for co-location shall also submit a plan for placement of base station equipment for potential future providers and/or services provided by additional antenna arrays.

Applicant Response: Please see Attachment 4-Zoning Drawings, page C-1.

(i) Grading shall be minimized and limited only to the area necessary for the new WCF.

Applicant Response: No grading will be necessary as indication on page T-1 of Attachment 4-Zoning Drawings.

(j) Consolidation of WCFs shall comply with the following requirements; consolidation of two or more existing WCFs may be permitted pursuant to the provisions of this chapter, including a CUP and consideration of the following:

Applicant Response: AT&T is proposing a new concealed antenna support structure and the this subsection does not apply

22C.250.080 Wireless communication facilities – Design standards.

(1) All WCFs shall:

- (a) Be designed and constructed to present the least visually obtrusive profile.
- (b) Use colors such as gray, blue, or green that reduce visual impacts unless otherwise required by the city of Marysville, the FAA, or the FCC.

Applicant Response: AT&T is proposing monopole, camouflaged as a pine tree. The “limbs, antennas and associated equipment will be green and the pole will be painted brown, both in a non-glare finish. Please see Attachment 7-Photo Simulations.

- (c) Flush-Mount Antennas When Feasible. Nonflush-mounted antennas are allowed only upon written demonstration by the applicant that flush-mounting is not feasible.

Applicant Response: AT&T is proposing monopole, camouflaged as a pine tree. The “limbs”, antennas and associated equipment will be green and the pole will be painted brown. Flush mounting of the antennas is not feasible for this site because it would require stacking the antennas and would not allow for the required space to allow for three additional carriers. With the “tree-top” at 10ft above the antennas, the “tree limbs” will conceal the antennas. Please see Attachment 7-Photo Simulations.

(2) Base Stations.

- (a) Base stations that are not located underground shall not be visible from public views.
- (b) New base stations and ancillary structures shall be designed to complement or match adjacent structures and landscapes with specific design considerations such as architectural designs, height, scale, color, and texture and designed to blend with existing surroundings to the extent feasible. This shall be achieved through the use of compatible colors and building materials of existing buildings or structures on the property, and alternative site placement to allow the use of topography, existing vegetation or other structures to screen the base station and ancillary structures from pedestrian views. Where feasible, one building with multiple compartments shall be constructed to serve the total number of anticipated co-location tenants. If the applicant can demonstrate that one building is not feasible or practical due to site design or other constraints, then a site plan shall be provided to demonstrate how all potential base stations and ancillary structures will be accommodated within the vicinity of the WCF.

Applicant Response: AT&T is proposing an 8-foot solid wood fence and gate with a 5-foot landscape buffer surrounding the base equipment and support structure. The monopine and wooden fence will blend with the wooded background. Please see Attachment 7-Photo Simulations.

- (3) Height Standards. The height of the antenna support structure shall be measured from the natural undisturbed ground surface below the center of the base of the tower to the top of the tower or, if higher, to the top of the highest antenna or piece of equipment attached thereto. The height of any WCF shall not exceed the heights provided in the table below.

Zone	Maximum Height
GC, DC, CB , NB, GI, LI, MU, PI, WR-CB, WR-MU, MS, F	140 feet
R-4.5, R-6.5, R-8, WR-R-4-8, R-12, R-18, WR-R-6-18, MMF, MH1, MH2	80 feet
Open Space and Recreation	140 feet

Notes:

- (1) New antenna support structures must comply with MMC 2 2C.250.070(4)(e) through (g).
- (2) Increases to the height of an existing antenna support structure are permitted, provided:

- (a) It is consistent with all conditions of the CUP authorizing the use and subsequent approvals thereafter;
- (b) The existing conditions and the proposed changes are not in violation of the MMC;
- (c) It is necessary to accommodate an actual co-location of the antenna for additional service providers or to accommodate the current provider's antenna required to utilize new technology, provide a new service, or increase capacity;
- (d) Height increases are limited to no more than 40 feet above the height of the existing antenna support structure unless explicitly allowed in the CUP;
- (e) A nonconformance shall not be created or increased, except as otherwise provided by this chapter;
- (f) A detailed certification of compliance with the provisions of this section is prepared, submitted, and approved.

Applicant Response: The total proposed structure height will be 140ft to the "tree-top", 130 feet to the top of the monopole and 130 feet to the top of the antennas. Please see Attachment 4-Zoning Drawings.

(4) Setback Requirements.

- (a) Antenna support structures outside of the right-of-way shall have a setback from property lines of 10 feet from any property line and 50 feet or one foot setback for every one foot in height from any residentially zoned property, whichever provides the greatest setback.
- (b) Base stations shall be subject to the setback requirements of the zone in which they are located.
- (c) The department shall consider the following criteria and give substantial consideration to on-site location; setback flexibility is authorized when reviewing applications for new antenna support structures and consolidations:

- (i) Whether existing trees and vegetation can be preserved in such a manner that would most effectively screen the proposed tower from residences on adjacent properties;
- (ii) Whether there are any natural landforms, such as hills or other topographic breaks, that can be utilized to screen the tower from adjacent residences;
- (iii) Whether the applicant has utilized a tower design that reduces the silhouette of the portion of the tower extending above the height of surrounding trees.

Applicant Response: The proposed support structure exceeds the 10ft setback requirement as follows:

West Property Line: 20'3"
North Property Line: 221'2"
East Property Line: 14'7"
South Property Line: 65'5"

The base equipment is in line with the support structure and meets the 10ft setbacks for the zone. None of the property lines abut residentially zoned property. Please see page SP-1 of Attachment 4-Zoning Drawings.

(5) Landscaping and Fencing Requirements.

(a) All ground-mounted base stations and ancillary structures shall be enclosed with an opaque fence or fully contained within a building. In all residential zones, or a facility abutting a residential zone, or in any zone when the base station and ancillary structures adjoin a public right-of-way, the fence shall be opaque and made of wood, brick, or masonry. In commercial or industrial zones, if a chain-link fence is installed, slats shall be woven into the security fence.

Required fencing shall be of sufficient height to screen all ground equipment and shall be subject to MMC 22C.010.380 and 22C.020.330. The city shall have the authority to determine the type of enclosure and materials required based upon review of existing site and surrounding conditions.

(b) Landscaping shall be done in accordance with Chapter 22C.120 MMC.

(c) When a fence is used to prevent access to a WCF or base station, any landscaping required shall be placed outside of the fence.

(d) Landscaping provisions may be modified in accordance with MMC 22C.120.190.

Applicant Response: The proposed facility is in the CB zone. As allowed in MMC 22C.020.330, AT&T is proposing an 8ft solid wood fence and gate surrounding the base equipment and support structure, with a 5ft landscape buffer surrounding the fence. Landscaping requirements for WCF's are not specifically addressed in MMC 22C.120 for facilities not designated residential by the Marysville comprehensive plan. This proposal conforms with the requirements for outside storage areas or above ground utility boxes. Please see Attachment 7-Photo Simulations and Attachment 4-Zoning Drawings.

(6) Lighting Standards. Except as specifically required by the FCC or FAA, WCFs shall not be

illuminated, except lighting for security purposes that is compatible with the surrounding neighborhood. Any lighting required by the FAA or FCC must be the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) allowable to minimize the potential attraction to migratory birds. Dual lighting standards (white blinking light in daylight and red blinking light at dusk and nighttime) are required and strobe light standards are prohibited unless required. The lights shall be oriented so as not to project directly onto surrounding residential property, and consistent with FAA and FCC requirements.

Applicant Response: No Additional lighting will be required by the FAA. Please see Attachment 11-FAA TOWAIR Determination.

(7) Signage. Commercial messages shall not be displayed on any WCF. The only signage that is permitted upon an antenna support structure, base station, or fence shall be informational, and for the purpose of identifying the antenna support structure (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable). If more than 220 voltage is necessary for the operation of the facility and is present in a ground grid or in the antenna support structure, signs located every 20 feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum letter height of four inches) the following: HIGH VOLTAGE – DANGER.

Applicant Response: Signage will be limited to information for the purpose of identifying the antenna support structure and security and safety signs as shown on page C-4 of Attachment 4-Zoning Drawings.

(8) Sounds. Maximum permissible sound levels to intrude into the real property of another person from a wireless communication facility shall not exceed 45 dB(A). In the case of maintenance, construction, and emergencies, these sound levels may be exceeded for short durations as required by the specific circumstance. (Ord. 3193 § 23, 2021; Ord. 3125 § 4 (Exh. C), 2019; Ord. 2852 § 10 (Exh. A), 2011).

Applicant Response: Project will comply with the noise level requirements of this section. Please see Attachment 10-Noise Report.

22C.250.180 Time limits for review.

Congress and the Federal Communications Commission (FCC) have, pursuant to the authority granted by 47 U.S.C. Sections 253(c) and 332(a), required local governments to act on wireless communication facility applications within a reasonable period of time and have established time limits or “shot clocks” for local review. The Washington State Legislature has also adopted similar limitations under the provisions of Chapter 35.99 RCW. Accordingly, the city adopts the following time limits for review of applications for eligible facility requests, small wireless permits, and other approvals for service providers of telecommunication services. (Ord. 3125 § 4 (Exh. C), 2019).

22C.250.190 Wireless communication permit process/processing timelines.

The city shall make every reasonable effort to comply with the requirements of 47 CFR Sections 1.40001 and 1.6003 and the presumptively reasonable time periods for review established therein and identified in the table below:

Facility Type	Time Frame for Review (commences at submittal)	Days to Determine Application Completeness
Wireless Communication Facility – Nonco-location (e.g., new tower, pole, structure), excluding SWF	150 days	30 days

(Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: AT&T is applying for a Conditional Use Permit and understands the permit processing timelines.

22C.250.230 Recovery of city costs.

(1) Each permit granted pursuant to this chapter shall contain a condition which requires the permittee to reimburse the city for all direct and indirect expenses reasonably incurred in connection with the modification, amendment, or transfer of the permit.

(2) Each permittee shall be required to reimburse the city for all direct and indirect expenses not otherwise covered by permit application fees reasonably incurred while reviewing, inspecting, and supervising the construction, installation, and/or maintenance of a WCF authorized by a permit granted pursuant to this chapter.

(3) Costs incurred by the city in response to any emergency at the WCF shall be included within the reimbursable expenses set forth in this section. (Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: Understood.

22C.250.240 Maintenance of facilities.

Each permittee shall maintain its WCF or small wireless facilities in a good and safe condition and preserve its original appearance and concealment, disguise, or camouflage elements incorporated into the design at the time of approval and in a manner which complies with all applicable federal, state, and local requirements. Such maintenance shall include, but not be limited to, such items as painting, repair of equipment, and maintenance of landscaping. (Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: Understood and agreed.

22C.250.250 Testing of WCFs required – Radio frequency radiation.

All licensed carriers shall demonstrate that the WCF or small wireless facilities comply with FCC regulations by submitting a copy of the nonionizing electromagnetic radiation (NIER) report with any WCF permit application and a revised NIER report with any update of facilities that increases NIER. (Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: Please see Attachment 5-NIER Report submitted with the CUP application. It is understood that a revised NIER report will be required with any update of facilities that increases NIER.

22C.250.260 Testing of WCFs required – Noise emissions.

- (1) Each licensed carrier shall submit manufacturer's specification sheets of the equipment to be deployed to demonstrate compliance with state and city noise regulations. The carrier shall conduct tests, if necessary, to demonstrate compliance with all applicable local regulations regarding the noise emissions of the WCF. All such tests shall be performed by or under the supervision of a qualified acoustical consultant competent to perform such tests and interpret the data gathered.
- (2) Where determined necessary by the community development director, all licensed carriers shall submit a report, certified by a qualified acoustical consultant, setting forth the observed noise levels at the property line of the property upon which the WCF is located. The report shall account for background noise and other noise sources and demonstrate the noise levels emitted by the WCF, including any air conditioning or ventilation equipment contained therein.
- (3) Compliance reports shall be required when necessary to address existing or ongoing noise concerns.
- (4) The city may retain a technical expert in environmental noise measurement to verify the noise measurements and certification. The cost of such a technical expert shall be borne by the licensed carrier.
- (5) This section shall not apply to any WCF that does not contain air conditioning equipment. (Ord. 3129 § 3 (Exh. B), 2019; Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: Please see Attachment 10-Noise Report for compliance with local regulations. Equipment specification sheets will be provided with the Building Permit application or as requested.

22C.250.270 Security.

All WCFs shall be protected from unauthorized use through appropriate means approved by the director on a case-by-case basis consistent with the purpose of protecting the public health, safety, and welfare. (Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: AT&T is proposing an 8-foot fence with a locked gate.

22C.250.280 Technical evaluation.

The city may retain the services of an independent technical expert such as a registered professional electrical engineer accredited by the state of Washington who holds a federal communications general radio telephone operator license. The engineer will provide technical evaluation of permit applications for WCFs or small cell wireless facilities. The applicant shall pay all the costs of said review. (Ord. 3125 § 4 (Exh. C), 2019; Ord. 2852 § 10 (Exh. A), 2011. Formerly 22C.250.090).

Applicant Response: Understood.

22C.250.290 Interference.

Whenever the city encounters radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by one or more WCFs, the following steps shall be taken:

- (1) Upon notification by the city to WCF service providers potentially interfering with public safety

communications equipment, the providers shall cooperate and coordinate with the city and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Best Practices Guide," released by the FCC in February 2001, including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time.

(2) If any WCF owner fails to cooperate with the city in complying with the owner's obligations under this section, or if the FCC makes a determination of radio frequency interference with the city public safety communications equipment, the owner who fails to cooperate and/or the owner of the WCF which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the city for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the jurisdiction to determine the source of the interference. For the purposes of this subsection, "failure to cooperate" shall include failure to initiate any response or action as described in the "Best Practices Guide" within 24 hours of the city's notification. (Ord. 3125 § 4 (Exh. C), 2019; Ord. 2852 § 10 (Exh. A), 2011. Formerly 22C.250.100).

Applicant Response: The FCC has sole jurisdiction to regulate and abate interference. AT&T will comply with all requirements under applicable law

22C.250.300 Cessation of use.

Discontinuance or Abandonment. Any WCF that is not operated for a period of 12 months shall be considered abandoned, and the owner of such WCF shall remove the WCF within 90 days of receipt of notice from the governing authority notifying the owner of such abandonment. If such WCF is not removed within said 90 days, the governing authority may remove the WCF at the owner's expense. An extension may be requested and granted for up to 12 months by the community development director if good cause is shown, the WCF is maintained, and conditions would not be detrimental to the public health, safety, or general welfare. If there are two or more users of a single WCF, then this provision shall not become effective until all users cease using the WCF. (Ord. 3125 § 4 (Exh. C), 2019; Ord. 2852 § 10 (Exh. A), 2011. Formerly 22C.250.110).

Applicant Response: Understood.

22C.250.310 Revocation or termination of permit.

In addition to the remedies and process set forth in Chapter 22I.010 MMC, a permit issued pursuant to this chapter may be revoked for the following reasons:

- (1) Construction and/or maintenance operation of a WCF or small wireless facilities at an unauthorized location;
- (2) Construction or operation of a WCF or small wireless facilities in violation of any of the terms and conditions of this chapter or the conditions attached to the permit;
- (3) Misrepresentation or lack of candor by or on behalf of an applicant, permittee, or wireless communications service provider in any application or written or oral statement upon which the city substantially relies in making the decision to grant, review or amend any permit pursuant to this chapter;

- (4) Abandonment of a WCF as set forth in this chapter;
- (5) Failure to relocate or remove facilities as required in this chapter; or
- (6) Failure to promptly cure a violation of the terms or conditions of the permit. (Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: Understood.

22C.250.320 Notice and duty to cure.

In the event that the city believes that grounds exist for revocation of a permit, the permittee shall be given written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the permittee a reasonable period of time not exceeding 30 calendar days to furnish evidence:

- (1) That corrective action has remedied the violation or noncompliance;
- (2) That rebuts the alleged violation or noncompliance; and/or
- (3) That it would be in the public interest to impose some penalty or sanction less than revocation. (Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: Understood.

22C.250.330 Hearing.

In the event that a permittee fails to provide evidence reasonably satisfactory to the city as provided in MMC 2 2C.250.320, the city shall refer the apparent violation or noncompliance to the hearing examiner. The city shall provide the permittee with notice as described in MMC 2 2G.010.110 and 2 2G.010.120, and a reasonable opportunity to be heard concerning the matter and a public hearing shall be conducted.

- 1. The hearing examiner shall provide a decision as outlined in MMC 22G.060.110.
- 2. In making its decision, the hearing examiner shall apply the following factors:
 - (a) Whether the misconduct was egregious;
 - (b) Whether substantial harm resulted;
 - (c) Whether the violation was intentional;
 - (d) Whether there is a history of prior violations of the same or other requirements;
 - (e) Whether there is a history of overall compliance; and
 - (f) Whether the violation was voluntarily disclosed, admitted or cured. (Ord. 3125 § 4 (Exh. C), 2019).

Applicant Response: Understood.

III. REVIEW PROCEDURES

22G.010.430 Conditional use permit.

A conditional use permit shall be granted by the city only if the applicant demonstrates that:

- (1) The conditional use is designed in a manner which is compatible with the character and appearance of the existing or proposed development in the vicinity of the subject property;

Applicant Response: The property on which the proposed site will go is triangular in shape and is developed with a car wash to the north. The proposed facility will be camouflaged as a pine tree to blend with the pine and fir trees to the east and south. The compound will be fully enclosed with a wooden fence and will be surrounded with a 5ft landscape buffer.

- (2) The location, size and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;

Applicant Response: The proposed site is located half-way down a dead-end side road. There is a hotel and urgent care center on the west side of 38th Dr NE and a drive-through restaurant and carwash to the north of the proposed site. South of the site is vacant land belonging to the Tulalip Tribes. The proposed facility is unmanned and will create no traffic or disturb the neighborhood circulation.

- (3) The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property, and will be in harmony with the area in which it is to be located and in general conformity with the comprehensive plan of development of Marysville and its environs;

Applicant Response: The proposed site is designed as a monopine (a monopole camouflaged as a pine tree) to blend with the surrounding vegetation. It is further screened with an 8' solid wood fence and a 5ft landscape buffer. It generally conforms to the Marysville comprehensive plan to encourage growth and services.

Section C. Telecommunications, of the Utilities policies and goals element stresses the need to accommodate new development, especially in the UGA, to enhance the quality of life, and maintain viable, efficient and cost-effective delivery. Additionally, it stresses the need for new towers that use materials and structures that minimize visual impact to the community.

Residents and businesses expect the ability to communicate reliably by phone and other wireless devices. With more people working from home, and using wireless services there, the need for quality communication options is critical to economic growth and public safety.

- (4) Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;

Applicant Response: No modification to standards is being requested.

- (5) The conditional use will not endanger the public health or safety if located where proposed and developed, and the use will not allow conditions which will tend to generate nuisance conditions such as noise, dust, glare, or vibration;

Applicant Response: The proposed facility is unmanned and a passive use that creates no waste or burden on city services. Attachment 5-NIER Report details how the proposed facility complies with FCC regulations for health and safety. Attachment 10-Noise Report outlines the facility's compliance with the city of Marysville's noise standards. All surfaces will have a non-glare finish

- (6) The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;

Applicant Response: As the proposed is an unmanned facility, requiring only one vehicular visit per month, conflict with existing and anticipated traffic is minimal.

- (7) The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities;

Applicant Response: As a passive use and an unmanned facility no public facilities or services are required.

- (8) The use meets all required conditions and specifications set forth in the zone where it proposes to locate;

Applicant Response: As demonstrated throughout this Statement of Code compliance, the proposed wireless telecommunication facility meets all required conditions and specifications for the Community Business zone.

- (9) The use will not be injurious or detrimental to adjoining or abutting property, or that the use is a public necessity;

Applicant Response: The proposed WCF will comply with all Federal, state, county and city regulations and codes to ensure it is not injurious or surrounding properties. The proposed facility will help fulfill the City's need for reliable communication services for health and safety, as well as business and convenience.

- (10) In addition, the city may impose specific conditions precedent to establishing the use and conditions may include:

- (a) Increasing requirements in the standards, criteria or policies established by this title;
- (b) Stipulating the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides or traffic;
- (c) Requiring structural features or equipment essential to serve the same purposes as set forth in subsection (10)(b) of this section;
- (d) Imposing conditions similar to those set forth in subsections (10)(b) and (c) of this section, as deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance-generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, and physical hazards; and

Applicant Response: Understood.

- (10) A conditional use permit to site a secure community transition facility must comply with the following additional criteria:

Applicant Response: This proposal is not for a secure community transition facility and this section is not applicable.

CONCLUSION

Having met the requirements for approval of a conditional use permit for this project, AT&T respectfully requests that this application be approved subject only to the city's standard conditions of approval.