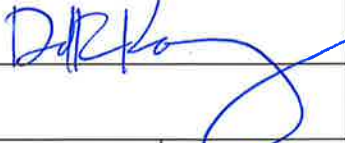


**CITY OF MARYSVILLE**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: April 8, 2019**

<b>AGENDA ITEM:</b> PA19-014 – Wireless Communication Facilities and Small Cell Wireless Code Amendments	<b>AGENDA SECTION:</b> New Business	
<b>PREPARED BY:</b> Angela Gemmer, Senior Planner	<b>APPROVED BY:</b> 	
<b>ATTACHMENTS:</b> 1. Memo to City Council dated 3/27/19 with attachment 2. PC Minutes dated 2/26/19, 3/12/19, and 3/26/19 3. Adopting Ordinance <ul style="list-style-type: none"> <li>· Exhibit A – PC Recommendation dated 3/26/19</li> <li>· Exhibit B – Wireless Communication Facilities definitions</li> <li>· Exhibit C – Wireless Communication Facilities amendments</li> </ul>		
	<b>MAYOR</b>	<b>CAO</b>
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>	

**DESCRIPTION:**

The Planning Commission (PC) held a public hearing on March 26, 2019 to review proposed amendments to Marysville Municipal Code Title 22, *Unified Development Code*, pertaining to wireless communication facilities and small cell wireless facilities. Small cell wireless facilities are smaller in size and coverage area than traditional macro wireless facilities (e.g. cell towers, lattice towers, etc.), and are being deployed by the wireless communications industry to help manage the data needs of smart phones and associated technology. To pave the way for the deployment of small wireless facilities, the Federal Communications Commission (FCC) recently issued a ruling which preempts certain aspects of a City’s customary authority over the right-of-way; establishes review “shot clocks” limiting the time jurisdictions have to review wireless facilities applications; and allows the City to adopt aesthetic design and concealment measures by April 14, 2019.

The City’s current Wireless Communication Facilities code, Chapter 22C.250 MMC, primarily regulates macro wireless communication facilities, but doesn’t address small cell facilities. The proposed code amendments are to: a) allow small cell wireless facilities; b) incorporate eligible facility request provisions (parameters for modifications to existing wireless facilities); and c) adopt the new federal timeframes for review. The PC received testimony from staff and interested parties at the public hearing following public notice. The PC made a motion to recommend the proposed amendments to City Council for adoption by Ordinance.

<b>RECOMMENDED ACTION:</b> Affirm the Planning Commission’s recommendation and adopt the wireless communication facilities and small cell wireless amendments by Ordinance.
<b>COUNCIL ACTION:</b>



COMMUNITY DEVELOPMENT DEPARTMENT  
80 Columbia Avenue ♦ Marysville, WA 98270  
(360) 363-8100 ♦ (360) 651-5099 FAX

## MEMORANDUM

**DATE:** March 27, 2019  
**TO:** City Council  
**FROM:** Angela Gemmer, Senior Planner  
**RE:** Wireless Communication Facilities and Small Cell Wireless Facilities Code Amendments  
**CC:** David Koenig, Community Development Director  
Chris Holland, Planning Manager  
Cheryl Dungan, Senior Planner  
Amy Hess, Associate Planner

The proliferation of the use of smart phones and associated mobile technology has resulted in the wireless communications industry deploying small wireless facilities within public right-of-way to help handle the data required for these devices. Small cell facilities are smaller in size than traditional macro wireless facilities and also have a smaller coverage area for the wireless signal.<sup>1</sup> To pave the way for the deployment of small wireless facilities, the Federal Communications Commission (FCC) recently issued a ruling which preempts certain aspects of a City's customary authority over the right-of-way and established review "shot clocks" limiting the time for jurisdictions to review applications for small wireless facilities. Previously, under State statutes, jurisdictions had one hundred twenty (120) days to consider a franchise for the use of its right-of-way and additional review processes were permitted. Under the FCC's new rule, the City must act within sixty (60) days on a request to attach small wireless facilities to existing utility structures or ninety (90) days if the request requires new structures (see MMC Section 22C.250.190 for timeframes on other facility types). These shot clocks provide a presumption that the City has acted within a reasonable timeline.

The City's current Wireless Communication Facilities code, Chapter 22C.250 MMC, primarily regulates macro wireless communication facilities (e.g. large cell towers, lattice towers, etc.), but doesn't address small cell facilities. The code is proposed to be amended to:

- a) Allow small cell wireless facilities;
- b) Incorporate eligible facility request provisions; and
- c) Adopt the new federal standard timeframes for review of wireless communication facilities, both macro and small cell.

The FCC ruling requires prompt City action on all of these matters. The FCC order allows the City to adopt aesthetic design and concealment measures by April 14, 2019. Additional amendments may be proposed in the future as this matter continues to evolve, and further changes may be needed to ensure compliance with FCC mandates and the City's needs. Staff respectfully requests that City Council affirm the Planning Commission's recommendation and adopt the proposed wireless communication facilities amendments by Ordinance.

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<sup>1</sup> For a primer on small cell wireless facilities, please refer to the attached document entitled 'Small Cell Wireless Information – National League of Cities'. Page 4 of this document includes a brief summary and graphics to explain what small cell wireless facilities consist of.

MUNICIPAL ACTION GUIDE

# Small Cell Wireless Technology in Cities



**NLC** NATIONAL  
LEAGUE  
OF CITIES

CITIES STRONG TOGETHER

# Introduction

From our connected homes, where everything is controlled by the internet, to our workplaces, where reliable broadband access is paramount for almost every type of job, technology is impacting every facet of our daily lives. Cities are inextricably linked to the internet, and the integration of new technologies promises better and more innovative ways to serve our residents.

With this seismic shift toward smart cities and the internet of things (IoT), reliance on wireless and wireline broadband infrastructure is becoming greater and greater. Mobile phones, IoT devices and other small wireless gadgets are becoming ubiquitous. Wireless data consumption has reached approximately 1.8 exabytes per month in North America alone, and that number is projected to grow six-fold by 2022.<sup>2</sup> As various wireless providers maintain that the roll out of 5G internet service is approaching, and the IoT proliferates with the connection of millions of new smart devices to the internet, cities must face the reality that to meet the increasing demands of residents, more wireless facilities and infrastructure must be deployed. With that

reality, city officials must also face a number of policy, public safety, land-use and right-of-way considerations.

As cities navigate this rapidly-changing policy issue with both wireless and infrastructure providers and community residents, a number of considerations for the different stakeholders begin to emerge. This action guide from the National League of Cities (NLC) provides an overview of small cell technology, as well as guidance on how local governments can plan for, develop policy and processes around, and manage the deployment of, small cell wireless infrastructure. It will also provide city leaders with strategies for proactively engaging with wireless providers and residents to plan for small cell networks in their communities.

## The Internet of Things in Connected Cities

**Every consumer product and piece of infrastructure** increasingly has the ability to sense surrounding stimuli, to communicate with other devices and people, and to draw on the computing and storage power of the cloud. This phenomenon has been dubbed the internet of things (IoT). The more smart devices and sharing platforms there are, the more data is generated about consumer preferences and habits. But what does this mean for cities? Smart cities are employing the same technology to connect their disparate utility, infrastructure and public service grids, generating real-time aggregate data. This, in turn, can help cities manage their programs and services more effectively and gauge their impact for residents, businesses and visitors immediately. The city of the future is an interconnected one, where devices communicate with one another in a constant stream of data that provides real-time information to the public and to the municipality.<sup>3</sup>





## What is a 'Smart City'?

The term 'smart city' sometimes seems to mean everything and nothing all at once, and a common question about the phenomena is some variation on, "what is a smart city?". A smart city is a city that has developed technological infrastructure that enables it to collect, aggregate and analyze real-time data and has made a concerted effort to use that data to improve the lives of its residents and the economic viability of the community. Smart city initiatives often involve four components: the underlying communications infrastructure, information and communication technologies (ICTs) that generate and aggregate data; analytical tools which convert that data into usable information; and organizational structures that encourage collaboration, innovation and the application of that information to solve public problems.<sup>1</sup> Examples include water or utility monitoring devices that promote efficient or sustainable usage, smart streetlights that double as gunshot spotters and communicate with city administrators when they need maintenance, and traffic control and management systems that streamline traffic bottlenecks and report congestion and traffic data to city transportation planners.



A small cell pole in the median of the Las Vegas Strip. (Photograph by SmartWorks Partners)

# Small Cell Technology

## What is small cell technology?

As wireless data usage continues to escalate, providers must find new and innovative ways to keep up with consumer demand for more speed and data capacity. One way to address the capacity crunch is by deploying “small cells,” a type of wireless technology for broadband infrastructure. Various federal, state and local laws define small cell differently. Generally, “small cell” refers to both the smaller coverage area of the wireless signal, and the smaller size of the infrastructure. Small cell installations generally cover much smaller geographic areas — measured in hundreds of feet — than the traditional macrocell towers that can cover miles in each direction. The antennas are much

smaller than those deployed at macrocell sites, and are often attached to buildings, rooftops and structures in public rights-of-way (ROW), including utility and light poles and other street furniture.<sup>4</sup> Pole- or ground-mounted equipment accompanying the antenna may also be needed and can be as big as a large refrigerator. This equipment may be in the ROW, or on other public or private property.

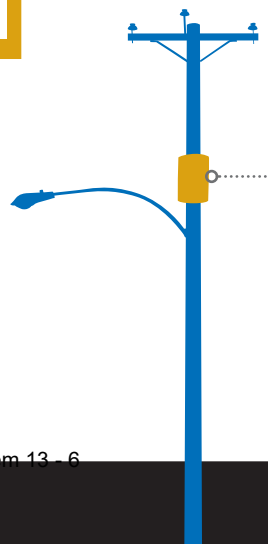
These facilities help to complement or stretch macrocell coverage and add capacity in high demand areas.<sup>5</sup> Small cell infrastructure is typically deployed to alleviate capacity constraints where crowds gather or to cover targeted areas, including public squares and spaces, downtown pedestrian areas, parks, office buildings, campuses, or stadiums and arenas.



### Macrocell vs. Small Cell:

Although they serve different purposes, macrocell and small cell technologies complement each other.

**Macrocell:** Traditional macrocell towers have a coverage area that spans several miles. They're hard to miss, although their signal degrades towards the edge of their coverage areas.



**Small Cell:** Small cell technology is much more discreet, mounted on existing structures like rooftops and utility poles. Sometimes, they are accompanied by refrigerator-sized equipment. Because small cells only supply a few hundred feet of coverage, they are best suited for dense areas like downtowns.

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## What are some of the benefits to cities?

With the increasing usage of wireless devices and data, cities are facing increased demand for reliable wireless service. Small cell facilities can be used to increase the mobile broadband network capacity in cities. This improved service and capacity has many advantages, including economic competitiveness, a “tech friendly” reputation, and more opportunities to deploy smart city and IoT applications. Given that up to 80% of today’s 911 calls are placed via wireless phones, robust wireless networks are also critical to public safety.<sup>6</sup>

## What are some of the risks to cities?

Often, wireless providers will want small cells deployed in dense urban areas to provide adequate capacity in high demand spots, and each provider will want its own facility installed to cover the same dense area. Thus, there may be several requests to locate such facilities in the same general areas, such that four polls in a row will have small cells from four different wireless companies. This can result in clusters of small cells that are visually unappealing and detract from the aesthetic of the community. Deployment and installation of small cell facilities can potentially interfere with existing technology, such as wireless traffic signals and other municipal technology in close proximity. There is also the risk of ground

mounted equipment associated with some small cell facilities obstructing a crowded city’s rights-of-way. In addition, recent state and federal efforts to speed the deployment of small cell facilities have focused on preempting local authority to review and control small cell deployments, or to collect fair rents for the use of public property.

## What federal and state policies apply to municipal siting processes?

The siting of wireless infrastructure is governed by local, state and federal law. Most wireless infrastructure siting is governed by the applicable government entity with control over the facility’s property or location, and there may also be state and/or federal laws that apply to local determination. Local governments assess applications for permits to build new or alter existing wireless facilities for a variety of purposes, including public safety, overall management of public property or rights-of-way, accessibility requirements, environmental issues, land use and community aesthetics. Local governments may charge wireless service providers or wireless facility providers for application processing, access to the rights-of-way, and/or ongoing fees for access to public property — such as municipal street lights or traffic lights — either pursuant to local codes, as part of a large master lease or license agreements with a provider, or on an application-by-application basis.



Federal oversight of wireless siting is primarily based on three federal laws: The Communications Act of 1934, the Telecommunications Act of 1996 (Telecommunications Act) and a provision of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).

These laws contain provisions intended to spur the development of wireless infrastructure and impose some limits on local authority over that infrastructure. The Telecommunications Act, for instance, makes it unlawful for local government to prohibit, or have the effect of prohibiting, the “provision of personal wireless service,” prevents local government from “unreasonably discriminating among providers of functionally equivalent services,” and requires that local government “act on any authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time.” It also stipulates that local governments denying siting applications do so “in writing and supported by substantial evidence contained in a written record.”<sup>7</sup> The Federal Communications Commission (FCC) has interpreted that a “reasonable period of time” for local governments to grant or deny siting requests is 150 days for new facilities, and 90 days for collocations.<sup>8</sup> This presumed time limitation is commonly known as a “shot clock.”

Meanwhile, the Spectrum Act also contains provisions that limit local control over collocated wireless facilities to ensure the swift deployment of wireless technologies. Section 6409(a) of the Act provided that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does

not substantially change the physical dimensions of such tower or base station.”<sup>9</sup> The FCC created regulations in support of this law, specifying that these collocation requests must be approved within 60 days of application, and that this definition includes distributed antenna system (DAS) and small cell facilities.<sup>10</sup> If a city finds that it received an incomplete application, it has a limited period of time in which to pause, or “toll,” the shot clock by notifying applicants in writing of the missing information and relevant local requirements.

The 1934 Communications Act has been cited in recent federal petitions and rulemaking activity<sup>11</sup> relating to the deployment of small cell facilities. Section 253 of the 1934 Act requires that local governments receive “fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis,” when determining costs to access the public rights-of-way. The FCC has solicited public comment on how and whether to clarify the meaning of this phrase in relation to small cell wireless facilities but has not yet issued a decision or guidance. Likewise, the FCC has recently issued orders prohibiting moratoria on wireless deployment applications and permitting in essentially all circumstances.<sup>12</sup>

State governments have also passed laws intended to speed the deployment of wireless infrastructure, particularly small cell infrastructure, in recent years. For example, Arizona’s HB 2365, which was signed into law on March 31, 2017, imposes a series of new requirements on cities’ regulation of wireless infrastructure. Arizona’s law creates timelines for both cities and applicants to complete reviews of applications and buildout of the requested site. Additionally, it states that rates

## The Telecommunications Act of 1996:

**The Telecommunications Act** makes it unlawful for local government to prohibit, or have the effect of prohibiting, the “provision of personal wireless service,” prevents local government from “unreasonably discriminating among providers of functionally equivalent services,” and requires that local government “act on any authorization to place, construct or modify personal wireless service facilities within a reasonable period of time.”

or fees are limited to not more than the actual and direct costs incurred by cities to review those applications or manage the ROW, and places a fixed dollar cap on those application fees, as well as a fixed cap on annual rights-of-way access and pole collocation fees.<sup>13 14 15</sup>

Other states have enacted similar limits on local review times, factors which may be considered in a site review and fees local governments may assess. State laws may limit whether local governments can enter into agreements with providers for larger-scale deployments of infrastructure within a community.

### What are some of the policy challenges cities face?

Cities adapting their ordinances or processes to enable efficient small cell deployment face a number of policy challenges. First, cities must consider any recent changes to state law that impact local ordinances. Nearly half of all states had already passed small cell legislation or were considering it by their 2018 legislative sessions. Many states that passed laws exempted municipal rights of way from the legislation. These laws may impact what fees or rates cities can assess, what factors they may consider when deciding whether to approve or deny a wireless facility application, and whether the city is subject

to a stricter application review timeline than federal regulations establish.

Cities must also consider their own internal capacity when determining how much time should elapse before a new ordinance focused on small cell deployment goes into effect. For example, if the new process demands the establishment of new online application systems or forms, the city should allow ample time to create those new systems before applicants will expect access to them, to avoid unnecessary delays in the application process. Particularly in the case of small cell deployments, providers may wish to file many applications at once as part of a network build-out, and cities should be prepared to determine whether they can limit the number of applications any provider can file within a given time period under state law, or whether they are capable of accepting batches of similar applications simultaneously.

Cities should be cautious in passing moratoria on new wireless facility applications. While moratoria may provide the necessary time for policy makers to determine how best to approach this new technological and administrative challenge, they are not legal in some states, and have been prohibited by the FCC. Moratoria may invite legal challenges from wireless providers eager to start construction.

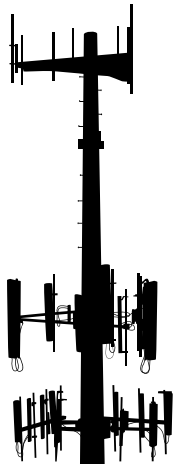
# City Examples

## Boston: Preserving History and Planning for a Technology-Driven Future

The city of Boston faced a unique challenge when it set out to upgrade the city's wireless networks: its history. The city contains narrow, twisting streets with little sidewalk space, carefully-maintained historic districts, and a wide variety of decorative poles and streetlights — including some gas lamps. This adds up to crowded rights-of-way

with sensitive aesthetic needs. However, a city known for its universities and tech industries needed to be a competitive leader on broadband infrastructure to retain and attract residents and businesses.

To address the growing demand for small cell wireless infrastructure, the city used widely-available online tools to create an online application and review process that has reduced the average turnaround time for small cell site application reviews to roughly two weeks. The city has also managed to stem potential floods in applications by placing reasonable obligations on providers eager to file many applications at once.



**Macrocell** technology is much better for large, low-density populations like quiet residential areas.

**Small cells** are perfect for small, dense-population areas with high-capacity needs. Downtowns, stadiums and theme parks are ideal for this technology.





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For instance, after a permit for a new wireless facility is approved, the provider must build its site within sixty days.

Because of its narrow, historic streets, Boston has had to work very closely with neighbors and wireless providers to create innovative pole designs that take up less sidewalk space, or to negotiate a different pole location on a nearby arterial street with fewer residences and more room to site equipment.

### **Lincoln: Creating Business Solutions to Technology Challenges**

In the city of Lincoln, Nebraska, broadband infrastructure is an important development priority. As demand for service, and for permission to build infrastructure, rose in the community, the city decided to tackle business process challenges. The city began physically relocating staff and grouping them by process and function, rather than department, and created a new rights-of-way construction group of staff from multiple departments to manage broadband infrastructure, small cell wireless applications and other issues. This created a one-stop-shop for private utility construction in the public right-of-way.

The city worked with carriers to create a standard pole design that met the needs of 95 percent of the city's pole locations and could accommodate most carriers' equipment. For the other five percent of locations, the city has worked with individual carriers to co-design poles to meet those

locations' needs and added those new designs to a list of pre-approved poles. The city has also developed a database of existing right-of-way infrastructure assets, such as water, power and broadband lines in the city. This helps smooth the application process and cuts down on the time needed to communicate between city departments and with providers. Additionally, the city has created a master license agreement process based on existing public-private partnership agreements and adapted the master license agreements used for broadband to business and home to mobile infrastructure. Making the agreements consistent, and posting them publicly online, has helped reassure providers that they are getting the same deal as their competitors and smoothed the negotiating process.

Lincoln has faced some challenges in recent years with its efforts to deploy wireless infrastructure. Some providers have successfully received permits to build new poles, but have not deployed in those locations, resulting in wasted city resources and no improved service for residents. The city has also fought back against attempts by the state legislature to preempt local authority over small cells. In 2017, the city battled wireless providers who claimed that city-induced costs were inhibiting infrastructure deployment. When Lincoln offered a discount to local carriers who were willing to build out connectivity in rural parts of Nebraska, the providers backed down, and ultimately preemptive legislation did not pass that year.

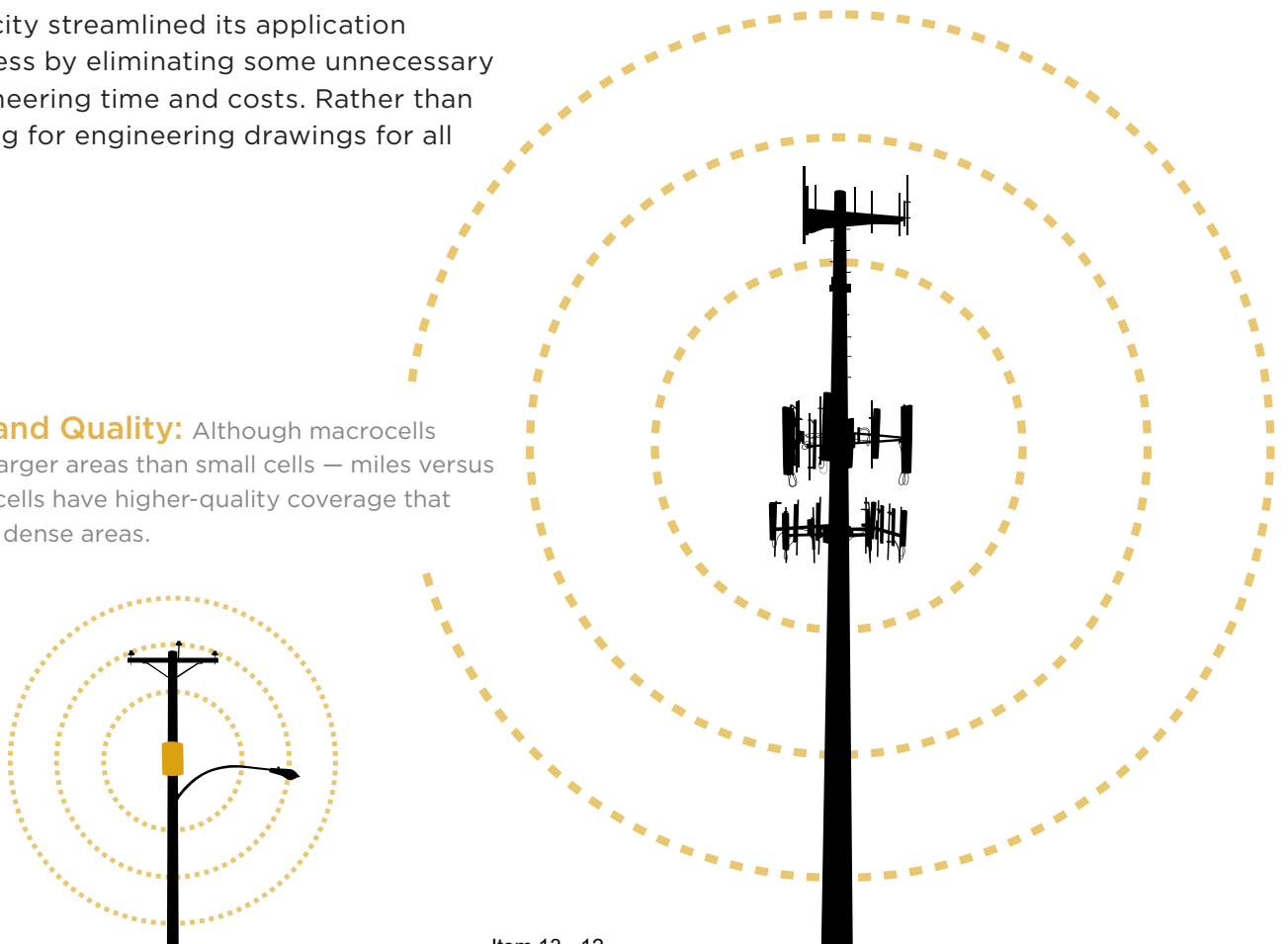
### Raleigh: Finding Common Ground with Industry Through Partnerships

The city of Raleigh is focused on being the best — with hopes of being designated a ‘best place’ to live, work and play, as well as a forward-thinking leader in the technology space. The city recognized that in order to achieve those goals, it would need to be open to the prospect of small cell wireless infrastructure deployment. From the moment the city was approached about installing small cell infrastructure, the priority was to establish a good working relationship with wireless providers while protecting and upholding the values and interests of residents within our communities.

The city streamlined its application process by eliminating some unnecessary engineering time and costs. Rather than calling for engineering drawings for all

installations, the city shifted its process to require basic geographic coordinates for proposed wireless sites, so that the city could quickly work with providers to find optimal locations. Wireless providers appreciated hearing back from city staff about site feasibility within a couple of days of submittal. The city has also taken several steps to hear the wishes of residents, most directly through its 20 Citizen Advisory Councils. City employees who manage small cell deployment have been meeting regularly with these advisory boards to gather feedback and answer questions about the process of small cell installation.

**Quantity and Quality:** Although macrocells cover much larger areas than small cells — miles versus feet — small cells have higher-quality coverage that works well in dense areas.



## What is Broadband?

**According to the** Federal Communications

Commission, broadband is connection speeds of at least 25 Mbps for downloads and three Mbps for uploads. About 20 percent of American households don't have access to broadband under this current definition.

One administrative challenge came about in the form of a piece of legislation passed by the state that preempts the city's ability to manage small cell applications. A 2017 law restricts local governments in the state of North Carolina from sending applications for collocated infrastructure — or infrastructure that wireless providers want to place on existing poles — to city council for review. Wireless providers that wish to collocate small cell infrastructure are allowed to seek administrative approval and place their equipment and infrastructure on those existing poles. This is intended to streamline the review process for small cell installations that do not require a new structure or pole to be constructed. While it shortens the administrative approval process, it removes the city's ability to govern on this issue.

### San Jose: Welcoming New Technology While Closing the Digital Divide

Equity drives San Jose's approach to bringing new technologies to the city, and the deployment of municipal broadband and municipal fiber lines is no exception. Located in Silicon Valley, San Jose city officials are acutely aware of the technology boom happening on their doorstep and are eager to welcome these advances, provided they can do so in a way that

speaks to the needs of all residents. With only three percent of the city connected to high quality fiber lines, the city needed to both improve overall access to high speed internet and address the digital divide for 95,000 residents without access. After commissioning a study of the city's broadband approach as well as conducting surveys of low-income populations, San Jose officials set about working with the private sector on an arrangement that facilitates deployment, speaks to the city's equity goals and meets provider expectations.

They settled on a tiered pricing structure where providers pay \$750-\$2500 depending on whether they will cover the entire city or smaller areas. Larger deployments essentially receive a bulk-discounted rate. This revenue then feeds into two important city goals: internal capacity building and digital equity. For the former, the revenue bolsters the public works department, enabling staff to streamline the permitting and governance processes. Providers are therefore amenable to the deal because it facilitates faster small cell deployment. Additionally, the remaining funds, \$24 million so far, go into a "Digital Inclusion Fund" to close the digital divide for low income and vulnerable populations.

When San Jose officials stepped back to look at the whole picture, they noticed that different providers had an interest in deploying in different market segments and, therefore, different neighborhoods. By building relationships with these carriers, San Jose has been able to spread coverage across the city. Where gaps arise, the digital inclusion fund fills in. Some of the projects on deck include free device checkout at libraries and coding camps. The city will also pursue grants on top of these core funds to further build out program support in the long term.

### Tempe: Bringing Transparency to the Process

The city of Tempe knows that small cell infrastructure will be integral to meeting the technological demands of the future. For city staff, determining the process for small cell infrastructure deployment and being transparent about it with wireless providers was very important. Once the city established a master license agreement with the first carrier in the market, that original agreement was used as a template to develop subsequent agreements with small cell infrastructure providers, who also wanted to deploy small cells and distributed antenna systems (DAS).

In 2017, however, preemptive legislation was passed by the Arizona state legislature that hindered the city's ability to completely control small cell infrastructure deployment. The new law imposed fee caps as well as shot clocks on the application

process. It also forced cities to reduce their fees to a rate that was significantly lower than existing market rate agreements.<sup>16</sup> The rationalization for such legislation was that it was needed to speed up deployment in Arizona by limiting a city's capacity to interfere via local legislation and incentivize 5G by reducing the industry's costs of deployment. During the negotiation period preceding the passage of the bill, the city fought hard to maintain its ability to manage the right-of-way, mostly in order to retain control over the aesthetic elements of deployment and to minimize any visual blight caused by the size of the small cell allowed (the equivalent of 27 pizza boxes).<sup>17</sup>

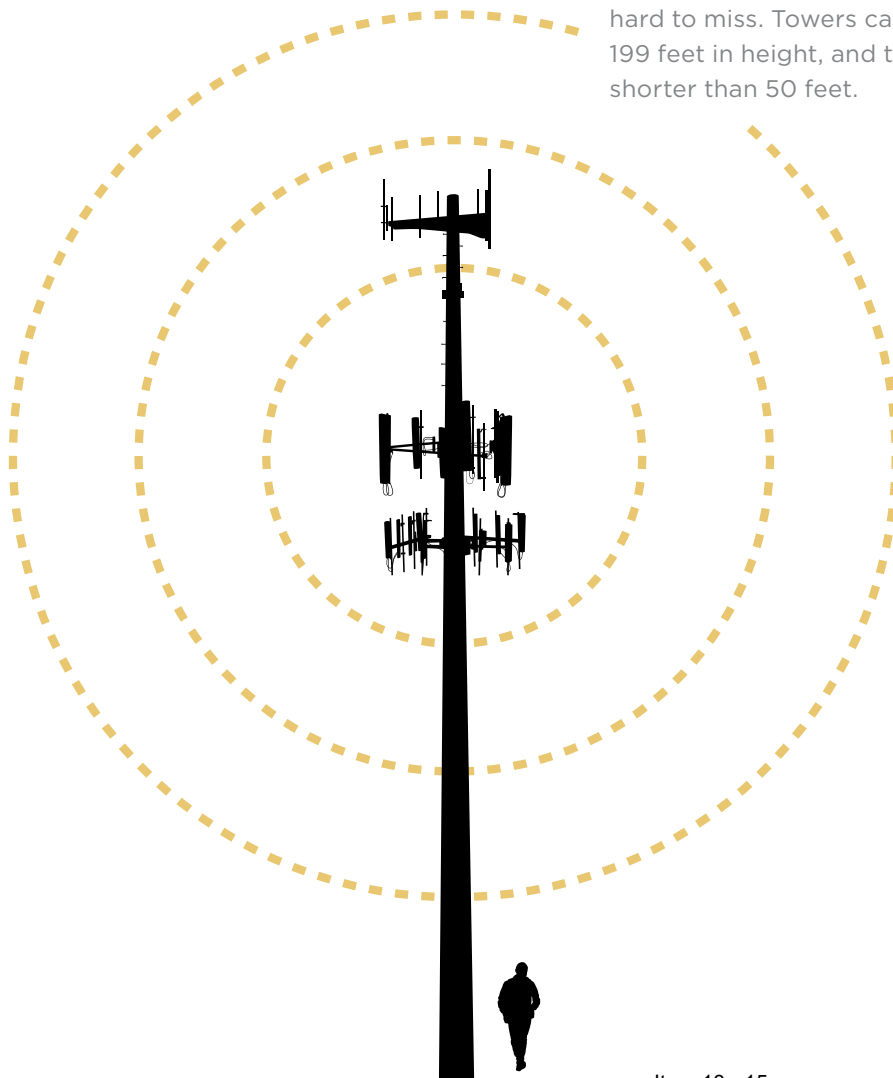
The new law required Arizona cities to establish and make standard terms of agreements publicly available. Tempe viewed the legislation's six-month implementation period as an opportunity to foster collaboration between the public and private sectors. Before finalizing the standard terms and conditions, site license provisions, application processes for small cells and design criteria, the city sent draft copies of all proposed documents to the major carriers and infrastructure providers for feedback. Collaboration with the industry was important in avoiding conflict when documents advanced to the city council for deliberation and approval.

The city also carefully considered the desires and values of the public. For residents, aesthetics and the way the new

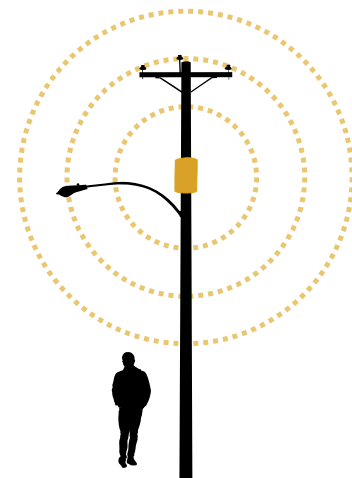
small cell infrastructure blended into the community were very important. Tempe was able to coordinate with other local cities and wireless providers to create design guidelines, ensuring that new infrastructure would mesh with the local aesthetic. The city worked to ensure that the guidelines were not too much of a

hindrance to deployment. Tempe found that balancing the concerns of industry with the city's ability to manage its poles and right-of-way is critical. Local government can function as the connection between the community and industry, ensuring that both parties' interests are represented and accounted for.

**Towers:** Macrocell infrastructure is hard to miss. Towers can reach up to 199 feet in height, and they're rarely shorter than 50 feet.



**Small cell:** Small cell antennas are typically only a few feet tall, roughly the size of a pizza box. They are also often accompanied by an equipment cabinet the size of a utility box or refrigerator.



# Strategies for City Leadership



## **1 Gain a full understanding of the technology and important safety considerations.**

Local elected officials and decision-makers should ensure that they understand technical, political and legal implications of the technology, its deployment, and any existing policies related to small cell facility siting. This will ensure that the best interests of the community are upheld when new decisions around small cell siting are being made.



## **2 Articulate your priorities for accommodating this technology.**

City officials should determine how they want to integrate this technology into their communities and be intentional about expressing those desires during the policy-making discussions and deployment process. Some questions and considerations might include:

- a. Whether the city wants to subsidize the build-out of the facilities to speed up wireless connections;**
- b. Whether the city needs extra time to conduct a thorough engineering review for public safety concerns; or**
- c. Whether the city will work to harmonize the facilities with the look and feel of different parts of town.**



## **3 Create clear policies for permit review that let both city staff and industry applicants know the expectations.**

This includes establishing processes for how applications will be addressed or processed, timeframes, objective requirements for the decisions and possibly application checklists. Cities should communicate these policies broadly and transparently to potential applicants. They may also wish to collaborate with likely applicants to develop design standards compatible with technological needs.





## **4** Develop a template right-of-way access policy/agreement, as well as a city pole attachment agreement.

Cities should make sure these policies and agreements address multiple kinds of infrastructure, from macrocell towers to small-cell facilities. This might include the establishment of requirements for both types of structures — such as size, location, design, public safety, stealth, etc.



## **5** Think through in advance any beneficial items the city could negotiate with industry in exchange for use of the right-of-way — if allowed by state law.

Issues up for negotiation might include collocation; length of time for siting; terms of installation; terms for upgrade; free or discounted services for schools, libraries, or other public entities; or other provisions that benefit the community and its residents.



## **6** Give careful consideration to fee structures.

There are a variety of fees and charges that cities may want to address. Application fees to cover the cost of staff to review applications, permitting fees to cover costs of building permit reviews and inspections, regulatory access fees for use of public ROW (ongoing), rent based on market rates if using public property (ongoing), and ongoing maintenance fees. Cities should take care to ensure that costs for removal of abandoned equipment are not borne by taxpayers.

# Definitions

## **Collocation:**

When multiple wireless providers attach antennas and other equipment to a single shared support structure. This practice may lower barriers to entry for new providers and reduce pole proliferation. The federal government defines collocation as: the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.<sup>18</sup>

## **Small cell facilities:**

Small cell facilities are a type of wireless broadband infrastructure. They typically take the form of small antennas that are placed on existing infrastructure (both indoors and outdoors) and ground mounted equipment. These facilities help to compliment or stretch tower macrocell coverage and add capacity in high demand areas. In many states this term is defined by state law.

## **Ground mounted equipment:**

This type of equipment sits at ground level, such as along sidewalks. It is distinct from equipment mounted on existing infrastructure such as telephone poles or buildings. This equipment is similar to traffic control or telephone equipment cabinets.

## **Macrocell:**

A macrocell is a wireless facility used in cellular networks with the function of providing radio coverage to a large area of mobile network access. A macrocell differs from a microcell by offering the backbone of coverage area and high-efficiency output. It is placed on stations where the output power is higher, usually in a range of tens of watts.<sup>19</sup>

## **Smart city:**

A “smart city” is one that has developed technological infrastructure that enables it to collect, aggregate and analyze real-time data to improve the lives of its residents.<sup>20</sup>

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### **Internet of things (IoT):**

The internet of things (IoT) is a computing concept that describes the idea of everyday physical objects being connected to the internet and able to identify themselves to other devices. The term is closely identified with RFID as the method of communication, although it also may include other sensor technologies, wireless technologies or QR codes.<sup>21</sup>

### **5G:**

The term for emerging 5th generation wireless telecommunications standards usually associated with network speeds of 1 Gpbs or more.<sup>22</sup>

### **Exabytes:**

An exabyte is a unit of measurement that describes  $10^{18}$  bytes or 1 billion gigabytes. This unit refers to such a large amount of data that it is typically used to express quantities of information transmitted over the internet in absolute terms.

### **Internet Service Providers:**

An internet service provider (ISP) is a company that provides customers with Internet access. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless or dedicated high-speed interconnects. Typically, ISPs also provide their customers with the ability to communicate with one another by providing Internet email accounts, usually with numerous email addresses at the customer's discretion. Other services, such as telephone and television services, may be provided as well. The services and service combinations may be unique to each ISP.<sup>23</sup> Throughout the paper we use this term synonymously with the term carrier.

### **Infrastructure Developer:**

Company or entity that invests in or builds out the basic physical and virtual systems of a community, including roads, utilities, internet and wireless networks, water, sewage, etc. These systems are considered essential for enabling productivity in the economy and require significant fiscal investments. Developers and investors can be from the public or the private sector.<sup>24</sup>

# Resources

**National Association of Telecommunications Officers and Advisors:** Wireless Facility Siting: Model Chapter Implementing Section 6409(a) and Wireless Facility Siting: Section 6409(a) Checklist — <https://www.natoa.org/documents/6409ModelOrdinance.pdf>

**United States Department of Commerce Internet Policy Task Force and Digital Economy Leadership Team:** Fostering the Advancement of the Internet of Things

[https://www.ntia.doc.gov/files/ntia/publications/iot\\_green\\_paper\\_01122017.pdf](https://www.ntia.doc.gov/files/ntia/publications/iot_green_paper_01122017.pdf)

**BroadbandUSA:** Broadband Glossary — [https://www2.ntia.doc.gov/files/bbusa\\_broadband\\_glossary\\_161024.pdf](https://www2.ntia.doc.gov/files/bbusa_broadband_glossary_161024.pdf)

**BroadbandUSA:** Smart Communities Glossary — [https://www2.ntia.doc.gov/files/bbusa\\_smartcommunitiesglossary\\_11212017.pdf](https://www2.ntia.doc.gov/files/bbusa_smartcommunitiesglossary_11212017.pdf)

<sup>1</sup> **Trends in Smart City Development.** (2016). National League of Cities. Access at: <http://www.nlc.org/sites/default/files/2017-01/Trends%20in%20Smart%20City%20Development.pdf>

<sup>2</sup> **Ericsson, Ericsson Mobility Report at 13** (Nov. 2016), <https://www.ericsson.com/assets/local/mobilityreport/documents/2016/ericsson-mobility-report-november-2016.pdf>.

<sup>3</sup> **Trends in Smart City Development.** (2016). National League of Cities. Access at: <http://www.nlc.org/sites/default/files/2017-01/Trends%20in%20Smart%20City%20Development.pdf>

<sup>4</sup> **Federal Communications Commission.** (2016). Public Notice: Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Citing Policies. Access at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1427A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1427A1.pdf)

<sup>5</sup> **WIA** (2017). Enabling Wireless Networks Everywhere, Presentation.

<sup>6</sup> See <https://www.nena.org/?page=911Statistics>.

<sup>7</sup> **47 U.S.C. § 332(c)(7)(B)**

<sup>8</sup> **Petition to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting**, WT-Docket No. 08-165 (11/18/09).

<sup>9</sup> 47 U.S.C. §1455(a)

<sup>10</sup> **Acceleration of Broadband Deployment by Improving Wireless Siting Policies**, WT Docket No. 13-238, 11-59, 13-32, (10/17/14)

<sup>11</sup> **Ibid.**

<sup>12</sup> **Federal Communications Commission. (2018):** Public Notice: FCC Speeds Access to Utility Poles to Promote Broadband, 5G Deployment. Access at

<https://www.fcc.gov/document/fcc-speeds-access-utility-poles-promote-broadband-5g-deployment-0>

<sup>13</sup> \$750.00 (A.R.S. § 9-593(I)) and \$1000.00 (A.R.S. § 9-594(E)(3)).

<sup>14</sup> \$50 per small cell (A.R.S. § 9-592(D)(4))

<sup>15</sup> \$50 per pole (A.R.S. § 9-595).

<sup>16</sup> The average small cell fee charged by Arizona cities in 2017 was \$3,530.00 per site, which included both the use of the pole and the use of the right-of-way for a small cell and associated ground equipment. (This amount was about 1/8 of the annual fees charged for macro sites). The legislation capped this fee at \$100.00 per site (\$50.00 for the use of the pole and \$50.00 for the use of the right-of-way.)

<sup>17</sup> All antennas to be located inside an enclosure of up to 6 cubic feet in volume and the associated equipment to be up to 28 cubic feet in volume. A.R.S. § 9-591(19).

<sup>18</sup> **47 C.F.R. § 1.40001(b)(2)**

<sup>19</sup> <https://www.techopedia.com/definition/2950/macroucell>

<sup>20</sup> **Trends in Smart City Development.** (2016). National League of Cities. Access at: <http://www.nlc.org/sites/default/files/2017-01/Trends%20in%20Smart%20City%20Development.pdf>

<sup>21</sup> <https://www.techopedia.com/definition/28247/internet-of-things-iot>

<sup>22</sup> [https://www2.ntia.doc.gov/files/bbusa\\_broadband\\_glossary\\_161024.pdf](https://www2.ntia.doc.gov/files/bbusa_broadband_glossary_161024.pdf)

<sup>23</sup> <https://www.techopedia.com/definition/2510/internet-service-provider-isp>

<sup>24</sup> <http://www.investorwords.com/2464/infrastructure.html#ixzz5COh9N3rU>

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## **About NLC**

The National League of Cities (NLC) is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership, and governance. NLC is a resource and advocate for more than 1,600 member cities and the 49 state municipal leagues, representing 19,000 cities and towns and more than 218 million Americans.

## **Acknowledgements**

Thank you to Kelly Martin, who created the data visualizations, cover illustration and report design, and to Laura Cofsky for editing the report. We are also grateful to all of the city officials, thought leaders, and experts who took the time to speak to us about small cell infrastructure siting.

All photos courtesy of Getty Images 2018 unless otherwise noted.

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**NLC** NATIONAL  
LEAGUE  
OF CITIES



# PLANNING COMMISSION



# MINUTES

February 26, 2019

7:00 p.m.

City Hall

## CALL TO ORDER

Chair Leifer called the February 26, 2019 meeting to order at 7:00 p.m.

### Marysville

**Chairman:** Steve Leifer

**Commissioners:** Roger Hoen, Jerry Andes, Kay Smith, Kelly Richards, Brandon Whitaker

**Staff:** Community Development Director Dave Koenig, Senior Planner Angela Gemmer

**Absent:** Tom Thetford (excused)

## APPROVAL OF MINUTES

### December 11, 2018

**Motion** made by Commissioner Smith, seconded by Commissioner Andes, to approve the December 11, 2018 Meeting Minutes as amended. **Motion** passed (5-0) with Commissioner Richards abstaining.

## AUDIENCE PARTICIPATION

None

## NEW BUSINESS

### A. Small Cell Wireless Facilities

Senior Planner Gemmer introduced the draft ordinance regarding small cell wireless facilities. The FCC recently adopted a ruling which requires jurisdictions to implement provisions for small cell facilities by April. There are certain requirements that

jurisdictions have to implement such as shot clocks, eligible facility request requirements, and other aspects to facilitate permits being issued. There is also a strict deadline of April 19 for jurisdictions that want to implement underground or aesthetic guidelines.

Director Koenig discussed what might be expected in terms of locating these and how it has been addressed in other jurisdictions. The plan is to take this to Council April 1 and April 8. There will be a Planning Commission hearing prior to that at the second meeting in March.

Commissioners asked general questions, and staff responded. There was discussion about the Planning Commission's agreement that there should be some design standards. Commissioner Andes referred to the photo in the handout on page 3 and expressed a desire to avoid the look of the jumbled bunch of wires.

### **Other Discussion:**

Director Koenig explained that in addition to the final draft of this, future Planning Commission topics are expected to include:

- State Avenue Plan
- Shoreline Master Plan Update
- Miscellaneous Code Changes

Commissioner Hoen asked what would happen if all the tenants in the MIC don't agree with the Plan? He expressed concern about the impact it would have on the value of the land for property owners and wondered why they had to relocate wetlands as opposed to working around the existing situation. Director Koenig explained that the stream bisects the parcels so if they don't relocate, they would end up with smaller parcels and more challenges related to access. By moving it over they would get larger parcels of land that are developable. It really would just impact a few property owners. He explained that the change would allow the area to develop at a higher density than it would if the parcels were split.

Commissioner Hoen asked if staff has decided how to bridge the Quilceda Creek on State Avenue yet. Director Koenig indicated they have and explained it is going through permitting right now.

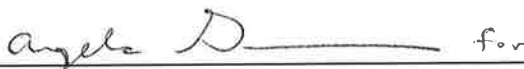
## **CITY COUNCIL AGENDA ITEMS AND MINUTES**

### **ADJOURNMENT**

**Motion** made by Commissioner Richards, seconded by Commissioner Andes, to adjourn the meeting at 7:55 p.m. **Motion** passed unanimously.

### **NEXT MEETING:**

March 12, 2019

 for  

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Laurie Hugdahl, Recording Secretary

# PLANNING COMMISSION



# MINUTES

**March 12, 2019**

**7:00 p.m.**

**City Hall**

## **CALL TO ORDER**

Chair Leifer called the March 12, 2019 meeting to order at 7:00 p.m.

### Marysville

**Chairman:** Steve Leifer

**Commissioners:** Roger Hoen, Jerry Andes, Kay Smith, Kelly Richards, Brandon Whitaker

**Staff:** Community Development Director Dave Koenig, Senior Planner Angela Gemmer, Senior Planner Cheryl Dungan

**Absent:** Tom Thetford (excused)

## **APPROVAL OF MINUTES**

### February 26, 2019

**Motion** made by Commissioner Smith, seconded by Commissioner Richards, to approve the February 26, 2019 Meeting Minutes as amended. **Motion** passed unanimously (6-0).

## **AUDIENCE PARTICIPATION**

None

## **OLD BUSINESS**

A. Small Cell Wireless Facilities

Senior Planner Gemmer reviewed the proposed revised Small Cell Wireless Facilities code, highlighting amendments made since the last meeting. She noted they are hoping to take this to a public hearing on March 26.

Amendments included:

- Addition of definitions on pages 1-3
- Images of what would be acceptable and unacceptable for small wireless facilities on page 15
- Pictures showing how small wireless facilities should be situated in a neighborhood on page 10
- Addition of substantial change criteria on page 17

Chair Leifer asked if providers would be allowed to submit a whole bunch of applications at one time in order to set up a network in an area. Senior Planner Gemmer stated that presently the language is open-ended. Usually these are processed in batches of 20 to 30 per application.

Commissioner Hoen asked if this ordinance is consistent with other state and federal ordinances. Senior Planner Gemmer explained that the proposed ordinance was largely based on the City of Bothell's ordinance and is currently under review by the City Attorney, the state Department of Commerce, the Public Utility District and other organizations. It appears to be consistent with federal and other regulations.

**Motion** made by Commissioner Hoen, seconded by Commissioner Andes, to consider this at a public hearing on March 26. **Motion** passed unanimously (6-0).

## **NEW BUSINESS**

### A. Shoreline Master Program Updates

Senior Planner Dungan

This was adopted in 2006. The legislature adopted an 8-year review period. This will bring the SMP in line with revisions to state law. She reviewed other changes proposed by staff:

- Amend chapter 8 to remove all administrative provisions from the SMP.
- Map revision to the Ebey Slough Environment to exclude the area westerly of the newly constructed levee by the USACE associated with the Qwuloolt project.
- Give Hearing Examiner final decision making authority on SCUPs and variances
- Add language authorizing CD to forward decisions to DOE
- Make all appeals directly appealable to the SHB;
- Change commencement of construction days after authorization of permit from 30 to 21 to be consistent with state law;
- Change authority to grant extensions to permits from City Council and Hearing Examiner to CD Director;
- Change authority to rescind permits from City Council to Hearing Examiner;

- Change authority to place a 'stop work order' from Mayor to CD Director;
- Authority to rescind a permit changed from City Council to Hearing Examiner;
- Appeals to rescission of permits or of modifications to permits are also appealed directly to the SHB;
- Transferred language directly from SMP to MMC regarding nonconforming uses; documentation of project review actions; and amendments to SMP and previously required by DOE;
- Eliminated 'Streamside Protection Zone' from 22E.050 as it pre-dates GMA and CAO
- Add shoreline conditional use permit criteria
- Add shoreline variance criteria

General clarification questions and answers followed.

Commission Whitaker asked if the city has a boating access and public facilities plan which would enable access to RCO funds. Director Koenig wasn't certain, but noted that they have accessed RCO funds for certain projects. He indicated Jim Ballew is the one who would know about his.

Senior Planner Dungan requested that the Planning Commission set a March 26 hearing date for the Shoreline Master Program.

**Motion** made by Commissioner Andes, seconded by Commissioner Hoen, to consider this at a public hearing on March 26. **Motion** passed unanimously (6-0).

## **CITY COUNCIL AGENDA ITEMS AND MINUTES**

### **ADJOURNMENT**

**Motion** made by Commissioner Richards, seconded by Commissioner Smith, to adjourn the meeting at 7:29 p.m. **Motion** passed unanimously.

### **NEXT MEETING:**

March 26, 2019

 for  
 \_\_\_\_\_  
 Laurie Hugdahl, Recording Secretary



**CITY OF MARYSVILLE**  
**Marysville, Washington**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, UPDATING THE CITY'S DEVELOPMENT REGULATIONS, AMENDING CHAPTER 22C.250, WIRELESS COMMUNICATION FACILITIES, AND SECTIONS 22A.020.020, 22A.020.030, 22A.020.040, 22A.020.050, 22A.020.060, 22A.020.130, 22A.020.140, 22A.020.170, 22A.020.200, 22A.020.210, 22A.020.220, 22A.020.240, AND 22A.010.160 OF THE MARYSVILLE MUNICIPAL CODE.**

WHEREAS, the State Growth Management Act, Chapter 36.70A RCW mandates that cities periodically review and amend development regulations, including zoning ordinances and official controls; and

WHEREAS, RCW 36.70A.106 requires the processing of amendments to the City's development regulations in the same manner as the original adoption of the City's comprehensive plan and development regulations; and

WHEREAS, the State Growth Management Act requires notice and broad public participation when adopting or amending the City's comprehensive plan and development regulations; and

WHEREAS, the City, in reviewing and amending its development regulations has complied with the notice, public participation, and processing requirements established by the Growth Management Act, as more fully described below; and

WHEREAS, the City Council of the City of Marysville finds that from time to time it is necessary and appropriate to review and revise provisions of the City's municipal code and development code (MMC Title 22); and

WHEREAS, the Marysville Municipal Code, Chapter 22C.250, Wireless Communication Facilities, regulates the installation of wireless communication facilities in the various zones of the City but currently focuses on macro facilities; and

WHEREAS, the City Council acknowledges that the growing use of smart phones and other personal wireless devices creates a substantial need for wireless data transmission and that the city requires regulation of small wireless facilities; and

WHEREAS, the Federal Communications Commission (FCC) recently adopted a Regulatory Ruling, Order and Regulation ("FCC Order") governing small wireless facilities, which imposes limitations on the processing of all permits associated with the deployment of small wireless facilities and requires the City to adopt aesthetic standard for such deployments; and

WHEREAS, federal law and regulation establishes both substantive and procedural limitations, including time limitations for review, upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station without substantially changing the height or profile of the structures, which are referred to as "eligible facility requests"; and

WHEREAS, the City Council finds that it is required to adopt and implement local development and zoning regulations and review procedures that are consistent with federal laws and regulations on wireless communication facilities, including small wireless facilities and eligible facility requests; and

WHEREAS, the City Council deems it to be in the public interest to establish time limits and ensure speedy review and processing of wireless communication facility permit applications, with such time limits commonly referred to as "shot clocks," as required by federal laws and regulations such as 47 U.S.C. § 1455(a), 47 CFR § 1.40001, and 47 CFR § 1.6003; and

WHEREAS, general design standards are necessary to maintain the aesthetic environment of the City's streetscape and accommodate evolving technology; and

WHEREAS, during public meetings on February 26, 2019, March 12, 2019, and March 26, 2019, the Planning Commission discussed proposed amendments to MMC Sections 22A.020.020, 22A.020.030, 22A.020.040, 22A.020.050, 22A.020.060, 22A.020.130, 22A.020.140, 22A.020.170, 22A.020.200, 22A.020.210, 22A.020.220, and 22A.020.240, and Chapter 22C.250, Wireless Communication Facilities; and

WHEREAS, the City of Marysville has submitted the proposed development regulation revisions to the Washington State Department of Commerce on February 27, 2019, as required by RCW 36.70A.106; and

WHEREAS, on March 8, 2019, the City issued a State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) which addresses the environmental impacts of the City-initiated code amendments, a non-project action proposal;

WHEREAS, after providing notice to the public as required by law, on March 26, 2019, the Marysville Planning Commission held a Public Hearing on the proposed amendments to the City's development regulations; and

WHEREAS, on March 26, 2019 the Planning Commission made a Recommendation to the City Council recommending the adoption of the proposed amendments to MMC Sections 22A.020.020, 22A.020.030, 22A.020.040, 22A.020.050, 22A.020.060, 22A.020.130, 22A.020.140, 22A.020.170, 22A.020.200, 22A.020.210, 22A.020.220, and 22A.020.240, and Chapter 22C.250, Wireless Communication Facilities; and

WHEREAS, at a public meeting on April 8, 2019 the Marysville City Council reviewed and considered the Planning Commission's Recommendation and proposed amendments to the development regulations; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Approval of Planning Commission's Recommendation and Adoption of Findings and Conclusions. The Planning Commission's March 26, 2019 Recommendation regarding the proposed development regulation amendments, including the Findings and Conclusions contained therein, as set forth in the attached **Exhibit A**, is hereby adopted and incorporated herein by this reference.

Section 2. Required Findings. In accordance with MMC 22G.010.520, the following findings are made regarding the development regulation amendments which comprise this ordinance:

- (1) The amendments are consistent with the purposes of the comprehensive plan; and
- (2) The amendments are consistent with the purpose of Title 22 MMC; and
- (3) There have been significant changes in the circumstances to warrant a change; and
- (4) The benefit or cost to the public health, safety, and welfare is sufficient to warrant the action.

Section 3. MMC Sections 22A.020.020, 22A.020.030, 22A.020.040, 22A.020.050, 22A.020.060, 22A.020.130, 22A.020.140, 22A.020.170, 22A.020.200, 22A.020.210, 22A.020.220, 22A.020.240, of the Marysville Municipal Code are hereby amended as set forth in **Exhibit B** attached hereto. Those terms contained in the sections cited above, that are not specifically amended as outlined in Exhibit B attached hereto, shall remain in full force and effect.

Section 4. MMC Chapter 22C.250, Wireless Communication Facilities, of the Marysville Municipal Code is hereby amended as set forth in **Exhibit C** attached hereto.

Section 5. Section 22A.010.160, Amendments, of the Marysville Municipal Code is hereby amended as follows by adding reference to this adopted ordinance in order to track amendments to the City's Unified Development Code:

**"22A.010.160 Amendments.**

The following amendments have been made to the UDC subsequent to its adoption:

<u>Ordinance</u>	<u>Title (description)</u>	<u>Effective Date</u>
_____	Wireless Communication Facilities Amendments	_____, 2019"

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 7. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

Section 8. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF MARYSVILLE

By: \_\_\_\_\_  
JON NEHRING, MAYOR

Attest:

By: \_\_\_\_\_  
TINA BROCK, DEPUTY CITY CLERK

Approved as to form:

By: \_\_\_\_\_

JON WALKER, CITY ATTORNEY

Date of Publication: \_\_\_\_\_

Effective Date: \_\_\_\_\_  
(5 days after publication)



**COMMUNITY DEVELOPMENT DEPARTMENT**  
80 Columbia Avenue ♦ Marysville, WA 98270  
(360) 363-8100 ♦ (360) 651-5099 FAX

### **PC Recommendation – Wireless Communication Facilities & Small Cell Wireless Amendments**

The Planning Commission (PC) of the City of Marysville, having held a public hearing on March 26, 2019 in review of NON-PROJECT action amendments of the Marysville Municipal Code, proposing amendments to Chapter 22C.250, *Wireless Communication Facilities*, which primarily pertain to the adoption of standards for small cell wireless facilities, eligible facilities requests, and “shot clocks” (timeframes for processing wireless communication facilities applications). Having considered the exhibits and testimony presented, PC does hereby enter the following findings, conclusions and recommendation for consideration by the Marysville City Council:

#### **FINDINGS:**

1. The Community Development Department held a public meeting to introduce the NON-PROJECT action Wireless Communication Facilities and Small Cell Wireless code amendments to the community on February 26, 2019.
2. The proposal was submitted to the State of Washington Department of Commerce for 14-day expedited review on February 27, 2019, in accordance with RCW 36.70A.106.
3. A State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) was issued on March 8, 2019; no appeals were filed.
4. The PC held public work sessions to review the NON-PROJECT action amendments proposing adoption of the NON-PROJECT action Wireless Communication Facilities and Small Cell Wireless amendments as described above, on February 26, 2019, March 12, 2019, and March 26, 2019.
5. The PC held a duly-advertised public hearing on March 26, 2019 and received testimony from city staff and the public.
6. At the public hearing, the PC reviewed and considered the Wireless Communication Facilities and Small Cell Wireless code amendments.

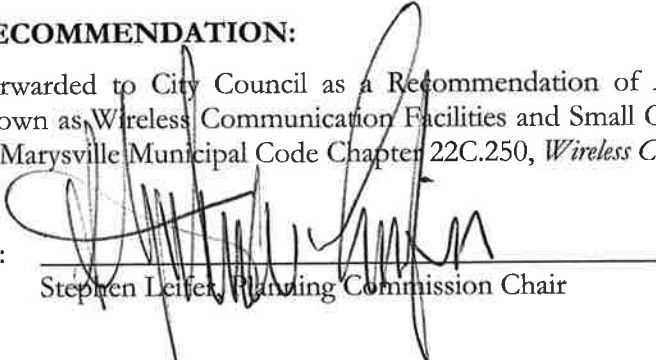
#### **CONCLUSION:**

At the public hearing, held on March 26, 2019, the PC recommended **APPROVING** the Wireless Communication Facilities and Small Cell Wireless code amendments.

#### **RECOMMENDATION:**

Forwarded to City Council as a Recommendation of **APPROVAL** of the NON-PROJECT action known as Wireless Communication Facilities and Small Cell Wireless code amendments, an amendment to Marysville Municipal Code Chapter 22C.250, *Wireless Communication Facilities*, this **March 26, 2019**.

By:

  
Stephen Leifer, Planning Commission Chair

## EXHIBIT B

### 22A.020.020 "A" definitions.

~~"Antenna" means any apparatus designed for the transmitting and/or receiving of electromagnetic waves, including but not limited to: telephonic, radio or television communications. Types of antenna elements include, but are not limited to: omni-directional (whip) antennas, sectorized (panel) antennas, multi or single bay (FM and TV), yagi, or parabolic (dish) antennas.~~

"Antenna" means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For the purposes of this definition, the term antenna does not include an unintentional radiator, mobile station or device authorized by Part 15 of Title 47 of the Code of the Federal Register.

~~"Antenna array" means a single or group of antenna elements and associated mounting hardware, feed lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.~~

"Antenna array" means two or more devices used for the transmission or reception of radio frequency signals, microwave or other signals for commercial communications purposes together with associated mounting hardware, feed lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure.

### 22A.020.030 "B" definitions.

~~"Base station" means the wireless service provider's specific electronic equipment used to transmit and receive radio signals located within and including cabinets, shelters, pedestals or other similar enclosures generally used to contain electronic equipment for said purpose.~~

"Base station" means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:

(1) Equipment associated with wireless communications services such as private, broadcast, and public safety services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small wireless networks.

(3) Any structure other than a tower that, at the time an eligible facilities modification application is filed with the City under Chapter 22C.250 MMC, supports or houses equipment described in subparagraph (1) and (2) above that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time an eligible facilities modification application is filed with the City under this section, does not support or house equipment described in subparagraph (1) and (2) above.

### 22A.020.040 "C" definitions.

"Camouflaged (small wireless facilities)" means the use of shape, color and texture to cause an object to appear to become a part of something else, usually a structure, such as a building, wall or roof.

"Camouflage" does not mean invisible, but rather appearing as part or exactly like the structure used as a mount.

"Concealed WCF," sometimes referred to as a "stealth" or "camouflaged" facility, means the antenna or antenna array, antenna support structure, base station, and feed lines are not readily identifiable as such, and are designed to be aesthetically compatible with existing and proposed building(s) and uses on a site. Examples of concealed attached facilities include, but are not limited to, the following: painted antenna and feed lines to match the color of a building or structure, faux windows, dormers or other architectural features that blend with an existing or proposed building or structure. Examples of concealed antenna support structures can have a secondary, obvious function which may be, but is not limited to, the following: church steeple, windmill, bell tower, clock tower, cupola, light standard, utility pole, flagpole with or without a flag, or tree.

"Concealment (small wireless facilities)" means fully hidden from view. For example, a WCF is concealed when it is completely hidden or contained within a structure, such as a building, wall or roof. The aesthetic and concealment provisions in Section 22C.250.130 govern the deployment of small wireless facilities.

#### **22A.020.050 "D" definitions.**

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"Developed street" and "right-of-way (wireless communication facilities)" means any public right-of-way classified as an alley (in commercial areas only), residential access street, collector street, minor arterial, or principal arterial and which is partially or fully developed and devoted to transportation use by the public at large. The term shall be interpreted to be synonymous with the term right-of-way as defined in RCW 35.99.010(5).

#### **22A.020.060 "E" definitions.**

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"Eligible Facilities Request" means 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:

- (1) Collocation of new transmission equipment;
- (2) Removal of transmission equipment; or
- (3) Replacement of transmission equipment.

Criteria on what constitutes a substantial change is set forth in MMC Section 22C.250.210.

"Eligible Support Structure" means any existing tower or base station as defined in Chapter 22C.250 MMC, provided that it is existing at the time an eligible facilities modification application is filed with the City.

"Emergency notification services" means services that notify the public of an emergency.

"Emergency services" means 911 emergency services and emergency notification services.

"Emergency support services" means information or database management services used in support of emergency services.

"Existing (wireless communication facilities)" for purposes of Chapter 22C.250 MMC where it is related to a constructed tower or base station, means a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process or under another applicable state or local regulatory review process, and the term also includes a tower that was lawfully constructed but that was not reviewed and approved because it was not in a zoned area when it was built.

#### **22A.020.130 "L" definitions.**

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"Licensed carrier" means any person, firm or entity licensed by the FCC to provide personal wireless services and which is in the business of providing the same.

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**22A.020.140 "M" definitions.**

"Mount," depending on its context, may mean any mounting device or bracket which is used to attach an antenna or antenna array to a utility pole, building, structure, lattice tower, or monopole or may mean the structure or surface upon which personal wireless communication facilities are mounted.

**22A.020.170 "P" definitions.**

"Panel antenna" means a directional antenna designed to transmit and/or receive signals in a directional pattern.

**22A.020.200 "S" definitions.**

"Small wireless" and "small wireless network" are defined in accord with 47 CFR § 1.6002(l).

"Small wireless facility, approved" means any small wireless facility that has received all required permits.

"Structure (wireless communication facilities)" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).

**22A.020.210 "T" definitions.**

"Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communication 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.

**22A.020.220 "U" definitions.**

"Utility pole" means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

**22A.020.240 "W" definitions.**

"Whip antenna" means an omni-directional antenna designed to transmit and/or receive signals in a 360-degree pattern.

~~"Wireless communications" means any personal wireless service, which includes, but is not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing devices described in Part 15 of the FCC rules and regulations, e.g., wireless Internet services and paging.~~

~~"Wireless communication facility" or "WCF" means any manned or unmanned location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennas, feed lines, and base station, and may include an antenna support structure. The following developments shall be deemed included in the general definition of a WCF: developments containing new, consolidated, or existing antenna support structures, public antenna support structures, and co-location on existing antenna support structures, co-location onto existing utility pole or cross-country electrical distribution tower, attached antennas or antenna arrays, base stations and feed lines whether concealed or nonconcealed. Included in this definition are: noncommercial amateur radio, amateur ham radio and citizen band antennas, satellite earth stations and antenna support structures, and antennas and/or antenna arrays for AM/FM/TV/HDTV broadcasting WCFs.~~

“Wireless communications facilities (WCFs)” means any unstaffed facility for the transmission and/or reception of wireless communications services.

“Wireless communication services” means any of the technologies as defined by Section 704(a)(7)(c)(i) of the Federal Telecommunications Act of 1996, including cellular, PCS, enhanced specialized mobile radio (ESMR), specialized mobile radio (SMR), and paging.

“Wireless right-of-way use agreement” or “WROWA” means the initial authorization or renewal of an agreement to construct wireless communication facilities including small wireless facilities in, under, over (if permitted by city regulations), or across public ways of the city and to also provide wireless telecommunications service to persons or areas in the city.

## EXHIBIT C

### **22C.250.010 Purpose.**

The purpose of this chapter is to:

- (1) Establish clear regulations for the siting and design of wireless communication facilities consistent with federal regulations.
- (2) Promote the health, safety, and general welfare of the public by regulating the siting of WCFs.
- (3) Minimize impacts of WCFs and small cell wireless facilities on surrounding areas by establishing standards for location, structural integrity, and compatibility.
- (4) Encourage the location and co-location of wireless communication equipment on existing structures.
- (5) Minimize visual, aesthetic, public safety, and environmental and wildlife effects.
- (6) Accommodate the growing need and demand for wireless communication services.
- (7) Provide WCFs, small cell wireless facilities, and associated infrastructure a regulatory process that ensures that wireless communication providers are able to serve the City, and its residential, educational, public safety and all other commercial users, as well as visitors, who use wireless services as well as providing consumers a choice of providers that compete on the basis of cost with continuous improvements in quality, reliability, and innovation;
- ~~(7)(8)~~ Respond to the policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to prohibit or have the effect of prohibiting personal wireless services.
- ~~(8)(9)~~ Encourage orderly development in a preferred hierarchy using concealed technologies.
- (10) Encourage the development of WCFs and small cell wireless on a competitively neutral basis.
- (11) Ensure compliance with the timeframes outlined in 47 USC § 253(c) and 47 USC § 332(a), and Chapter 35.99 RCW, as amended. (Ord. 2852 § 10 (Exh. A), 2011).

### **22C.250.020 Wireless Communication Facilities – Applicability.**

- (1) If a conflict arises between this chapter and the provisions of another chapter regarding wireless communication facilities, this chapter shall govern.
- (2) Facilities regulated by this chapter include the construction, modification, and placement of all WCFs, FCC-regulated amateur radio antennas, dish antennas, and any antennas used for MMDS or wireless cable, and wireless service facilities (i.e., cellular phone service, PCS – personal communication services, wireless paging services, wireless Internet services, etc.). Wireless services shall be subject to the following regulations to the extent that such requirements:
  - (a) Do not unreasonably discriminate among providers of functionally equivalent services;
  - (b) Do not have the effect of prohibiting personal wireless services within the city of Marysville. (Ord. 2852 § 10 (Exh. A), 2011).

### **22C.250.030 Wireless Communication Facilities – Exemptions from land use review.**

The following are exempt from the provisions of this chapter:

- (1) Amateur radio antenna operated by a federally licensed amateur radio operator as part of the amateur or business radio service are exempt from the provisions of this chapter except MMC [22C.250.040](#) and [22C.250.120](#).
- (2) Citizen band or two-way radio antenna including any mast.
- (3) Satellite earth stations (satellite dishes) that are one meter (39.37 inches) or less in diameter in all residential districts and two meters or less in all other zoning districts and which are not greater than 20 feet above grade in residential districts and 35 feet above grade in all other zoning districts.
- (4) A temporary ~~commercial~~ wireless communications facility, for the purposes of:
  - (a) providing coverage of a special event such as news coverage or sporting event, subject to approval by the city, except that such facility must comply with all federal and state requirements. Said wireless communications facility may be exempt from the provisions of this chapter up to one week prior and one week after the special event;
  - (b) evaluating the technical feasibility of a particular site for placement of a WCF; or
  - (c) providing emergency communications during a natural disaster or other emergencies which may threaten the public health, safety and welfare.
- (5) In the event a building permit is required for any emergency repair, notification in writing to the director of community development shall occur within 24 hours of identification of the needed repair, and filing of the building permit application shall be done in compliance with the city's adopted building code. (In the event a building permit is required for nonemergency maintenance, reconstruction, repair

or replacement, filing of the building permit application shall be required prior to the commencement of such nonemergency activities.)

(6) Antenna modifications, provided there is no increase in the height of the antenna support structure; and provided, that the size of the replaced antennas is not increased.

(7) The siting of wireless service facilities is categorically exempt from the State Environmental Policy Act (SEPA) if the proposed facilities meet the requirements established in WAC [197-11-800\(25\)](#) and MMC [22E.030.090\(3\)\(a\)](#) as adopted or otherwise amended. (Ord. 2988 § 1, 2015; Ord. 2852 § 10 (Exh. A), 2011).

**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.

<b>Concealed Attached WCF</b>	<b>WCF Consolidation</b>	<b>Concealed Co-Location</b>	<b>Flush- or Nonflush-Mounted Antenna on Existing Antenna Support Structure</b>	<b>New Concealed Antenna Support Structure</b>	<b>Combined on Existing WCF</b>	<b>Amateur Radio Antennas</b>
P1, 3 C	C	P1 C	P1 C	C	P1 C	P2

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

2. Amateur radio antennas are permitted subject to MMC [22C.250.120](#).

3. Concealed attached WCFs proposed within the public right-of-way are subject to MMC [22C.250.070\(3\)](#).

(Ord. 2852 § 10 (Exh. A), 2011).

**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.

(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

(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.

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.

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

- (a) The name and address of the operator(s) of proposed and existing antennas on the site;
- (b) The height of any proposed antennas;
- (c) Manufacture, type, and model of such antennas;
- (d) Frequency, modulation, and class of service; and
- (e) A description of the wireless communication service that the applicant intends to offer to provide or is currently offering or providing within the city.

(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 unimpaird signal can be received for that facility (propagation map).

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

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

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

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. 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	Co-location with existing antenna support structure: a. That requires no increase in pole or structure height. b. That requires an increase in pole or structure height, which shall comply with MMC <a href="#">22C.250.080(3)</a> .
2	New concealed antenna support structure or concealed consolidation: <ul style="list-style-type: none"> <li>• On developed, improved sites in nonresidential zoning districts; or</li> <li>• On publicly owned land.</li> </ul> Concealed attached WCF: <ul style="list-style-type: none"> <li>• Within public parks, public open spaces, and on other publicly owned land; or</li> <li>• Within public rights-of-way; or</li> <li>• Within nonresidential zoning districts or residential zoning districts on lots not used for single-family residential purposes.</li> </ul>
3	Concealed consolidations: a. In nonresidential zoning districts. b. In residential zoning districts on lots not used for single-family residential purposes.

4	<p>New concealed antenna support structure:</p> <ul style="list-style-type: none"> <li>a. In nonresidential zoning districts.</li> <li>b. In residential zoning districts on lots not used for single-family residential purposes.</li> </ul>
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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. 2852 § 10 (Exh. A), 2011).

**22C.250.070 Wireless Communication Facilities – General requirements.**

- (1) Co-located or combined facilities shall comply with the following requirements:
  - (a) Co-location of antennas onto existing antenna support structures meeting the dimensional standards of this chapter are permitted outright. Antenna mounts shall be flush-mounted onto existing antenna support structure, unless it is demonstrated through RF propagation analysis that flush-mounted antennas will not meet the network objectives of the desired coverage area. Furthermore, an antenna shall only extend vertically above the uppermost portion of the structure to which it is mounted or attached as follows:
    - (i) Not more than 20 feet on a nonresidential structure; and
    - (ii) Not more than 15 feet on a multifamily structure.
  - (b) Co-location of antennas onto a new antenna support structure constructed after May 1, 2006, shall be concealed.
  - (c) At the time of installation, the WCF base station and ancillary structures shall be brought into compliance with any applicable landscaping requirements.
  - (d) A co-located or combined WCF, its new base station, and any new ancillary structures shall be subject to the setbacks of the underlying zoning district.
  - (e) When a co-located or combined WCF is to be located on a nonconforming building or structure, then it shall be subject to the nonconformance provisions of Chapter [22C.100](#) MMC.
- (2) Concealed attached WCFs outside of the public ROW shall comply with the following requirements:
  - (a) Concealed antennas shall reflect the visual characteristics of the structure to which they are attached and shall be designed to architecturally match the facade, roof, wall, or structure on which they are affixed so that they blend with the existing structural design, color, and texture. This shall include the use of colors and materials, as appropriate. When located on structures such as buildings or water towers, the placement of the antenna on the structure shall reflect the following order of priority in order to minimize visual impact:
    - (i) A location as close as possible to the center of the structure; and
    - (ii) Along the outer edges or side-mounted; provided, that in this instance, additional means such as screens should be considered and may be required by the department on a case-by-case basis; and
    - (iii) When located on the outer edge or side-mounted, be placed on the portion of the structure less likely to be seen from adjacent lands containing, in descending order of priority, existing residences, public parks and open spaces, and public roadways.
  - (b) The top of the concealed attached WCF shall not be more than 40 feet above the existing or proposed nonresidential building or structure, or more than 15 feet above a residential building. Maximum height must be consistent with MMC [22C.250.080\(3\)](#).
  - (c) Feed lines shall be contained within a principal building or encased and the encasement painted to blend and match the design, color, and texture of the facade, roof, wall, or structure to which they are affixed.
- (3) Concealed attached WCFs proposed within the public right-of-way shall comply with the following requirements:
  - (a) An existing pole may be extended or replaced with a new pole, provided the original pole height may be increased by no more than the sum of the height of the wireless antenna(s) and necessary equipment, plus the minimum vertical separation distance as required by the utility agency.
  - (b) The pole must serve the original purpose and, if replaced, must be of similar appearance and composition as adjacent utility poles. The community development director may authorize the utilization of a composition material other than that of adjacent poles if it can be demonstrated that the utility’s engineering requirements necessitate that the different material be utilized.
  - (c) Antennas shall be flush-mounted.

(d) Field changes necessary in order to meet other utility agency requirements shall be reviewed and approved by the city prior to structure installation.

(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.

(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.

(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.

(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.

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.

(e) 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.

(f) 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.

(g) 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.

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

(5) 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:

(a) WCF consolidation shall reduce the number of WCFs.

(b) If a consolidation involves the removal of WCFs from two or more different sites and if a consolidated WCF is to be erected on one of those sites, it shall be erected on the site that provides for the greatest compliance with the standards of this chapter.

(c) Consolidated WCFs shall be concealed.

(d) All existing base stations and ancillary equipment shall be brought into compliance with this chapter.

(e) New WCFs approved for consolidation of an existing WCF shall not be required to meet new setback standards so long as the new WCF and its base station and ancillary structures are no closer to any property lines or dwelling units than the WCF and base station and ancillary structures being consolidated. For example, if a new WCF is replacing an old one, the new one is allowed to have the same setbacks as the WCF being removed, even if the old one had nonconforming setbacks.



(f) If the consolidated WCF cannot meet the setback requirements, it shall be located on the portion of the parcel on which it is situated which, giving consideration to the following, provides the optimum practical setback from adjacent properties:

- (i) Topography and dimensions of the site;
- (ii) Location of any existing structures to be retained. (Ord. 2852 § 10 (Exh. A), 2011).

**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 grey, blue, or green that reduce visual impacts unless otherwise required by the city of Marysville, FAA, or FCC.
- (c) Flush-mount antennas when feasible. Non-flush-mounted antennas are allowed only upon written demonstration by the applicant that flush-mounting is not feasible.

(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.

(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, BP	140 feet
R4.5 – R28	80 feet
Open Space and Recreation	140 feet

Notes:

- (1) New antenna support structures must comply with MMC [22C.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.

(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.

(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](#).

(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.

(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.

(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. 2852 § 10 (Exh. A), 2011).

**~~22C.250.090 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. The applicant shall pay all the costs of said review. (Ord. 2852 § 10 (Exh. A), 2011).~~

**~~22C.250.100 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. 2852 § 10 (Exh. A), 2011).~~

#### **22C.250.110 Cessation of use.**

~~(1) 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. 2852 § 10 (Exh. A), 2011).~~

#### **22C.250.090 Amateur radio antennas.**

Amateur radio antennas and support structures are subject to the following:

- (1) Maximum height shall be 75 feet, measured pursuant to the definition of WCF height.
- (2) Antennas or antenna support structures shall not be permitted in any setback area or within any front yard area. (Ord. 2852 § 10 (Exh. A), 2011).

#### **22C.250.100 Small Wireless Deployment.**

Small wireless deployment includes small wireless facilities and small wireless networks. The following provisions establish design and concealment standards for small wireless deployments, provided, however, that any small wireless or small wireless network component that is not exempt under law or ordinance from critical areas, SEPA, or shoreline review shall comply with the applicable requirements set forth in MMC Chapters 22E.010, Critical Areas Management, 22E.030, State Environmental Policy Act (SEPA), and 22E.050, Shoreline Management Master Program.

(1) Utility poles and structures in areas other than the Design District and underground districts. Eligible small wireless facilities permitted under the provisions of a franchise approval shall be considered to have satisfied the design and concealment standards when installed on utility poles and structures within the public right-of-way.

(2) Small wireless deployments on existing utility poles not approved pursuant to a franchise. Small wireless deployments on existing utility poles that have not been approved as an exhibit to the franchise or as a minor deviation thereto shall comply with the provisions of MMC 22C.250.130 and must seek approval pursuant to a permit issued as provided in this chapter.

(3) Replacement utility pole - street lighting. With the express permission of the City, a replacement utility pole or a new utility pole may be permitted in the form of a new streetlight standard except where prohibited by MMC Section 22C.250.130(5). The design of the street light standard shall be in accordance with adopted City construction standards when located outside of the Design District or underground district. Replacement utility poles/street light standards located within the Design District shall conform to the adopted streetscape design standard for the Design District. Wherever technologically feasible, all equipment and cabling shall be internal to the replacement street lighting standard.

(4) Undergrounded areas. In areas where utilities have been undergrounded, a service provider or infrastructure company desiring to locate any above-ground infrastructure in support of a small wireless deployment shall submit a concealment element plan in accordance with the provisions of MMC 22C.250.130(6).

#### **22C.250.110 Small Wireless Permit Application Requirements.**

In addition to any information required for a right-of-way permit, the following information shall be provided by all applicants for a small wireless permit:

(1) The application shall provide a site plan with specific locational information that includes GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:

(a) The location of overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the rights-of-way along the proposed route;

(b) The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.

(c) Compliance with the aesthetic design concealment requirements of MMC 22C.250.130.

(2) The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards from the pole owner, unless the pole owner is the City. Submission of the lease agreement between the owner and the applicant is not required. For city-owned poles or structures, the applicant must obtain a lease from the City prior to, or concurrent with, the small wireless permit application and must submit as part of the application the information required in the lease for the City to evaluate the usage of a specific pole.

(3) If the application is for a new or replacement light pole, then the applicant must provide a photometric analysis.

(4) The applicant can batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.

(5) Any application for a small wireless facility located in the right-of-way adjacent to a parcel zoned for residential use shall demonstrate that it has considered all of the following:

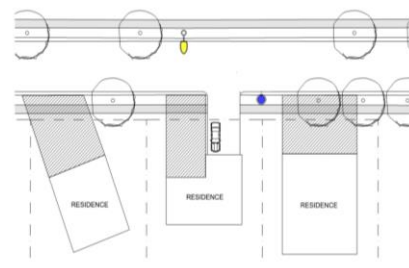
(a) Whether a small wireless facility is currently installed on an existing pole in front of the same residential parcel. If a small wireless facility exists, then the applicant must demonstrate that no technically feasible alternative location exists that is not in front of the same residential parcel.

(b) Whether the proposed small wireless facility can be screened from residential view by choosing a pole location that is not directly in front of a window or views. Within residential zones, small wireless facilities shall be located between property lines as depicted in Figures 1 and 2 below.

Figure 1



Figure 2



(6) Any application for a small wireless permit that contains an element not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 22E.030 MMC. Further, any application proposing small wireless facilities in Shoreline Management Zones (pursuant to Chapter 22E.050 MMC) or in Critical Areas (pursuant to Chapter 22E.010 MMC) must indicate that the application is exempt or comply with the review processes in said codes.

(7) The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facilities will comply with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small wireless facility will operate. If facilities that generate RF radiation necessary to the small wireless facility are to be provided by a third party, then the small wireless permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire

installation. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.

(8) The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

(9) A professional engineer licensed by the State of Washington shall certify in writing, under his or her seal, that both construction plans and final construction of the small wireless facilities and structure or pole and foundation are designed to withstand wind and seismic loads as established by the International Building Code. Further, the construction drawings shall depict all existing proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 250 feet from the proposed site. The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small wireless facility.

(10) A traffic control plan as required by the City's Engineering Design and Development Standards, and Title 12 MMC.

(11) The small wireless facilities permit shall include those elements that are outlined in the City's right-of-way permit application to allow the applicant to proceed with the buildout of the small wireless facility deployment.

(12) Recognizing that small wireless facility technology is rapidly evolving, the Director is authorized to adopt and publish standards for the technological and structural safety of City-owned structures and to formulate and publish application questions for use when an applicant seeks to attach to City-owned structures.

#### **22C.250.120 Small Wireless – Designated Design Districts**

(1) Design Districts. Design districts are hereby established for the following master plan areas and subareas of the City: Downtown Master Plan Area, East Sunnyside-Whiskey Ridge Subarea, 88<sup>th</sup> Street Master Plan Area, Lakewood Neighborhood Master Plan Area, and Smokey Point Master Plan Area. The boundaries of the Design Districts shall coincide with the boundaries of the above-referenced master plan areas and subareas as depicted in the respective master plan or subarea plan. The Design Districts create a well-coordinated, cohesive, and aesthetically pleasing experience within each respective District. The areas designated in the Marysville Engineering Design and Development Standards, and the rights-of-way of the streets within these master plan areas and subareas are designated as Design Districts for the purpose of the application of the provisions of this chapter.

(2) Any applicant who desires to place a small wireless facility in a Design District must first establish that the applicant cannot locate the small wireless facility outside of the Design District. Applications for small wireless facilities in a Design District may be approved if the applicant demonstrates that due to technical infeasibility the applicant cannot locate the proposed small wireless facility on an existing or replacement pole within 500 feet of the proposed site and outside of the Design District.

(3) Applications for small wireless facilities within the Design Districts are subject to an administrative land use review, and the proposed small wireless facility will only be permitted if it receives approval for a concealment element consistent with MMC 22C.250.130(6)(c).

Furthermore, wireless facilities within the Design Districts must comply with the design and construction standards established in the Marysville Engineering Design and Development Standards relating to streetlights to the extent reasonably applicable or adaptable to a proposed facility.

#### **22C.250.130 Small Wireless Deployments – Design and concealment standards.**

Small wireless facility deployments shall conform to the following design standards:

(1) Small wireless facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right-of-way or non-wooden poles outside of the right-of-way shall conform to the following design criteria:

(a) Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning no more than six (6) inches off of the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required

to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

(b) The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.

(c) All conduit, cables, wires and fiber must be routed internally in the light pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters, or sleeves if attaching to exterior antennas or equipment.

(d) An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including being colored or painted to match the pole, and shall be shrouded or screened to blend with the pole, except for canister antennas which shall not require separate shrouding or screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.

(e) Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

(f) The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary; provided that the height of the replacement pole cannot be extended further by additional antenna height.

(g) The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25% increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection 5(d) below.

(h) The use of the pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

(2) Wooden pole design standards. Small wireless facilities located on wooden poles shall conform to the following design criteria:

(a) The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.

(b) A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A "pole extender" as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

(c) Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.

(d) Antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.

(e) Antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.

(f) Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume.

(g) A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection 2(a) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall

be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.

(h) The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.

(i) An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

(j) All related equipment mounted on wooden poles, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit, shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required and is confirmed in writing by the pole owner.

(k) Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (5)(a). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

(l) An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs, provided that such location does not interfere with the operation of the banners or signs.

(m) The visual effect of the small wireless facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.

(n) The use of the wooden pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

(o) The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing utility pole measured at the base of the pole.

(p) All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small wireless.

(3) Small wireless facilities attached to existing buildings, shall conform to the following design criteria:

(a) Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.

(b) The interruption of architectural lines or horizontal or vertical reveals is discouraged.

(c) New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.

(d) Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.

(e) Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.



(f) Small wireless facilities shall be painted and textured to match the adjacent building surfaces.  
(4) Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.

(a) Each strand mounted facility shall not exceed three (3) cubic feet in volume;

(b) Only one strand mounted facility is permitted per cable between any two existing poles;

(c) The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance technically necessary or is required by the pole owner for safety clearance;

(d) No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;

(e) Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and

(f) Pole mounted equipment shall comply with the requirements of subsections (1) and (3) above.

(g) Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).

(h). Strand mounted facilities are prohibited on non-wooden poles.

(5) General requirements.

(a) Ground mounted equipment in the rights-of-way is prohibited, unless such facilities are placed under ground or the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights-of-way are prohibited.

(b) No equipment shall be operated so as to produce noise in violation of Chapter 6.76 MMC.

(c) Small wireless facilities are not permitted on City-owned light poles or traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC § 253 and 47 USC § 332.

(d) Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.

(e) Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.

(f) No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches); provided that, signs are permitted as concealment element techniques where appropriate.

(g) Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.

(h) Side arm mounts for antennas or equipment must be the minimum extension necessary and for wooden poles may be no more than twelve (12) inches off the pole and for non-wooden poles no more than six (6) inches off the pole.

(i) The preferred location of a small wireless facility on a pole is the location with the least visible impact.

(j) Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached.

(k) Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use in the residential zones.

(l) The City may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.

(m) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment

may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

(6) New poles in the rights-of-way for small wireless facilities and all installations in the Design Districts.

(a) New poles within the rights-of-way are permitted only if the applicant can establish that:

(i) The proposed small wireless facility cannot be located on an existing utility pole or light pole, on an electrical transmission tower, or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower, or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;

(ii) The proposed small wireless facility receives approval for a concealment element design, as described in subsection (c) below;

(iii) The proposed small wireless facility also complies with the Shoreline Management Act, Growth Management Act, and SEPA, if applicable; and

(iv) No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Ordinance (Chapter 22E.010 MMC), except when determined to be exempt pursuant to said ordinance.

(b) An application for a new pole is subject to an administrative land use review and approval.

(c) The concealment element design shall include the design of the screening, fencing, or other concealment technology for a tower, pole, or equipment structure and for all related transmission equipment or facilities associated with the proposed small wireless facility, including but not limited to fiber and power connections.

(i) The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights-of-way, including similar height to the extent technically feasible. If the proposed small wireless facility is placed on a replacement pole in the Design Districts, then the replacement pole shall be of the same general design as the pole it is replacing, unless the Public Works and Community Development Directors otherwise approve a variation due to aesthetic or safety concerns. Any concealment element design for a small wireless facility on a decorative pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the decorative pole. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color, and texture as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted herein.

(ii) If the Director has already approved a concealment element design either for the applicant or another small wireless facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible or that such deployment would undermine the generally applicable design standards.

(d) Even if an alternative location is established pursuant to subsection (1)(a) and (1)(b), the Director may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan, and the added benefits to the community.

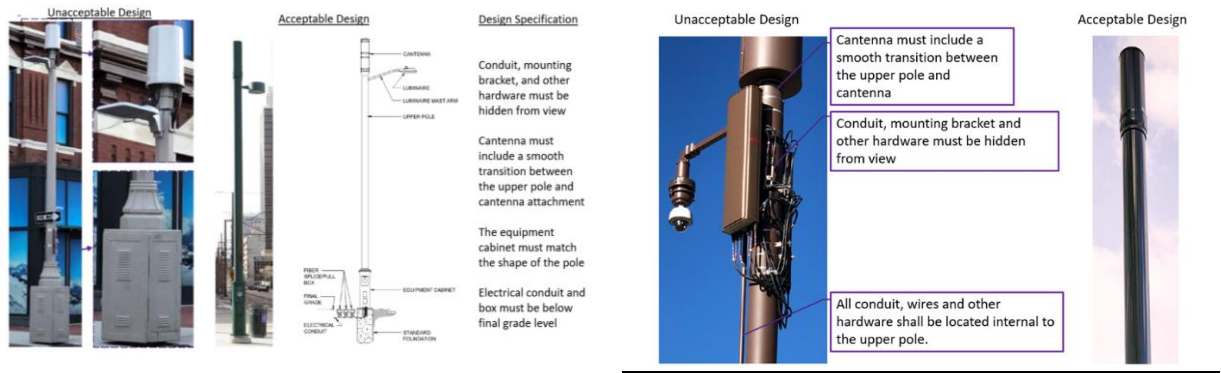
(e) Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles where the overall height of the replacement pole and the proposed small wireless facility is more than sixty (60) feet.

(f) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections of the street scape.

Examples of Unacceptable and Acceptable Small Wireless Facilities

Figure 3

Figure 4



**22C.250.140 Small Wireless – Review Process.**

- (1) Review. The following provisions relate to review of applications for a small wireless facility permit.
  - (a) In any zone, upon application for a small wireless permit, the City will permit small wireless deployment on existing or replacement utility poles conforming to the City's generally applicable development and design standard adopted pursuant to MMC 22C.250.130, except as provided in subsection (2) below.
  - (b) Vertical clearance shall be reviewed by the Public Works Director or designee to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-ways.
  - (c) Small wireless facilities may not encroach onto or over private property or property outside of the right-of-way without the property owner's express written consent.
- (2) Community Development Department. The following requires particular review by the Community Development Department:
  - (a) Small wireless deployment in areas designated as a Design District pursuant to MMC 22C.250.120, which will be reviewed for compliance with MMC 22C.250.130(6);
  - (b) New non-City owned poles, which will be reviewed for compliance with MMC 22C.250.130(6);
  - (c) Replacement poles deviating from the pole design standards adopted pursuant to Chapter MMC 22C.250.130, as such replacement poles must seek authorization pursuant to MMC 22C.250.160.
- (3) Eligible Facilities Requests. The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded upon an Eligible Facilities Request described in MMC 22C.250.200 when the modification does not defeat the concealment elements of the small wireless facility.
- (4) Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC § 253 and 47 USC § 332 and other applicable statutes, regulations, and case law. Applicants for franchises and the small wireless facility permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers, utilizing supporting infrastructure that is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.
- (5) Final Decision. Any decision by the Director shall be final and not be subject to administrative appeals.
- (6) Public Comment. The City shall provide notice of a complete application for a small wireless facility permit on the City's website with a link to the application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. The City shall post meeting notices, if any for informational meetings on its website. These meetings are for the public's information and are neither hearings nor part of any land use appeal process.
- (7) Withdrawal. Any applicant may withdraw an application submitted pursuant to MMC 22C.250.110 at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or by their successors in interest. When a withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs prior to the Director's decision, then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of City costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Director's decision, there shall be no refund of all or any portion of such fee.

(8) Supplemental Information. Failure of an applicant to provide additional information as requested pursuant to MMC 22C.250.110(12) by the Community Development Director within sixty (60) days of notice by the Director shall be deemed a denial of that application, unless an extension period has been requested of, and approved by, the Director.

#### **22C.250.150 Small Wireless – Permit Requirements**

(1) The grantee of any permit shall comply with all of the requirements within the small wireless permit.

(2) Small wireless facilities shall apply for and be issued a right-of-way use permit to install such small wireless facilities in accordance with the standard requirements of the City for use of the right-of-way.

(3) Post-Construction As-Builts. Within thirty (30) days after construction of the small wireless facility, the grantee shall provide the City with as-builts of the small wireless facilities demonstrating compliance with the permit and site photographs.

(4) Permit Time Limit. Construction of the small wireless facility must be completed within six (6) months after the approval date by the City. The grantee may request one (1) extension to be limited to three (3) months, if the applicant cannot construct the small wireless facility within the original six (6) month period.

(5) Site Safety and Maintenance. The grantee must maintain the small wireless facilities in safe and working condition. The grantee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

#### **22C.250.160 Small Wireless – Modifications and Minor Deviation Approval**

(1) The Community Development Director may authorize minor deviations designated by the applicant in an application for a Small Wireless Permit from the dimensional design and concealment techniques referenced in the exhibits to the franchise or the design standards.

(2) Deviations in the height, dimension or volume of small wireless facilities which are necessary to conform the facilities to the requirements of the pole owner, to provide adequate safety clearances or to address similar technical issues may be approved as minor deviations provided that the deviations do not cause the facility to exceed the height and volumetric limitations contained in the definition of a small wireless facility. Replacement of components of an existing, approved small wireless facility which do not exceed the volumetric limitations contained in the definition of a small wireless facility may also be approved as a minor deviation, Provided, however, in each instance the modified facilities do not defeat the concealment requirements set by the City's generally applicable aesthetic, design and concealment standards or a concealment plan approved pursuant to this chapter.

(3) The decision of the Director to approve a Small Wireless Permit with a minor deviation, if any, shall be final and is not subject to review under city code.

(4) A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility within the rights-of-way or for the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small wireless facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a small wireless facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small wireless facility. However, routine maintenance, repair, or replacement shall comply with Chapter 12.02A MMC and the Marysville Engineering Design and Development Standards (EDDS), including the general standards applicable to the use of the rights-of-way described in Chapter Title 12 MMC.

#### **22C.250.170 Small Wireless Facilities – Consolidated Permit**

(1) The issuance of a small wireless permit grants authority to construct small wireless facilities in the rights-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both the Public Works and the Community Development departments. If the applicant requires a new franchise to utilize the right-of-way, the franchise approval may be consolidated with the small wireless facility permit review if requested by the applicant. As an exercise of police powers pursuant to RCW 35.99.040(2), the small wireless facility permit is not a right-of-way use permit, but instead a consolidated public works and land use permit and the issuance of a small wireless facility permit shall be governed by the time limits established by federal law for small wireless facilities.

(2) The general standards applicable to the use of the rights-of-way described in Title 12 MMC and the Marysville Engineering Design and Development Standards shall apply to all small wireless facility permits.

**22C.250.180 Time Limits for Review**

Congress and the Federal Communications Commission (“FCC”) have, pursuant to the authority granted by 47 USC § 253(c) and 47 USC § 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.

**22C.250.190 Wireless Communication Permit Process/Processing Timelines.**

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

<b><u>Facility Type</u></b>	<b><u>Time Frame for Review (commences at submittal)</u></b>	<b><u>Days to Determine Application Completeness</u></b>
<u>Eligible Facilities Modification</u>	<u>60 days</u>	<u>30 days</u>
<u>Small Wireless Facility (SWF) on Existing Structure</u>	<u>60 days</u>	<u>10 days</u>
<u>Small Wireless Facility (SWF) on New Structure</u>	<u>90 days</u>	<u>10 days</u>
<u>Wireless Communication Facility Collocation, excluding SWF</u>	<u>90 days</u>	<u>30 days</u>
<u>Wireless Communication Facility – Noncollocation (e.g. new tower, pole, structure), excluding SWF</u>	<u>150 days</u>	<u>30 days</u>

**22C.250.200 Eligible Facilities Request.**

(1) Application Review.

(a) Application. The Community Development Director or designee shall prepare and make publicly available an application form that shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

(b) Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the Director shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

(c) Time frame for review shall be as outlined in MMC Section 22C.250.190.

(d) Determination that application is not an Eligible Facilities Request. If the Director determines that the applicant’s request does not qualify as an Eligible Facilities Request, the Director shall deny the application. To the extent additional information is necessary, the Director may request such information from the applicant to evaluate the application under other provisions of this chapter and applicable law.

(2) Failure to act. In the event the Director fails to approve or deny a request for an Eligible Facilities Request within the time frame for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(3) Remedies. Both the applicant and the City may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

**22C.250.210 Substantial change criteria.**

A substantial change is a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) For towers other than towers in the public right-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- (2) For towers other than towers in the public right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (4) It entails any excavation or deployment outside the current site;
- (5) It would defeat the concealment elements of the eligible support structure; or
- (6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

**22C.250.220 Administrative decision.**

A decision of the Community Development Director or designee made in accordance with this chapter, including assessment of fees as provided herein, shall be considered a final administrative land use decision.

**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.

**22C.250.240 Maintenance of facilities.**

Each permittee shall maintain its WCF or small wireless facilities in a good and safe condition and to 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.

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

All licensed carriers shall demonstrate that the WCF or small wireless facilities complies with FCC regulations by submitting a copy of the non-ionizing electromagnetic radiation (NIER) report with any WCF permit application and a revised NIER report with any update of facilities that increases NIER.

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

- (1) Each licensed carrier shall conduct tests 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) 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 on a biennial basis.

(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.

**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.

**22C.250.090280 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. 2852 § 10 (Exh. A), 2011).

**22C.250.100290 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. 2852 § 10 (Exh. A), 2011).

**22C.250.110300 Cessation of use.**

(1) 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. 2852 § 10 (Exh. A), 2011).

**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.

**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.

**22C.250.330 Hearing.**

(1) In the event that a permittee fails to provide evidence reasonably satisfactory to the city as provided in MMC 22C.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 22G.010.110-120, and a reasonable opportunity to be heard concerning the matter and a public hearing shall be conducted.

(2) The hearing examiner shall provide a decision as outlined in MMC 22G.060.110.

(3) 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.