

ORDINANCE NO. 2019-1561

AN ORDINANCE OF THE CITY OF CHELAN, WASHINGTON, RELATING TO WIRELESS COMMUNICATION FACILITIES; REVISING CHAPTERS 15.22 AND 17.70 TO THE CHELAN MUNICIPAL CODE; ESTABLISHING DEVELOPMENT REGULATIONS FOR CO-LOCATION, REMOVAL AND REPLACEMENT OF WIRELESS TRANSMISSION FACILITIES TO CONFORM TO FEDERAL LAW AND REGULATIONS; ESTABLISHING AN APPLICATION PROCESS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, the Telecommunications Act of 1996 (the "1996 Act") amended the Communications Act of 1934 and implemented regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City of Chelan (the "City") has adopted regulations that have been codified in the Chelan Municipal Code establishing local requirements for the zoning standards applicable to wireless facilities; and

WHEREAS, in 2012, Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") at 47 U.S.C. § 1455(a); and

WHEREAS, Section 6409 (hereafter "Section 6409") of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the “FCC”) to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued a report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, (the “Report and Order” or “Order”) clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC's review processes under the National Environmental Policy Act of 1969 (“NEPA”) and section 106 of the National Historic Preservation Act of 1966 (“NHPA”), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 - PRACTICE AND PROCEDURE) by adding new Subpart CC § 1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing based station (“Eligible Facility Request Rules”); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60 day review requirement and tolling provisions, establishes a deemed approved remedy for applications not timely responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (RCW Chapter 43.21C), pursuant to Washington Administrative Code Chapter 197-11, and a determination of Non-Significance (“DNS”) was issued on March 29, 2019 and published on April 3, 2019; and

WHEREAS, on April 17, 2019, the Planning Commission held a duly noticed public hearing related to the proposed development and zoning regulations set forth in the proposed ordinance; and

WHEREAS, the City Council considered the proposed development and zoning regulations on in a public workshop on April 9, 2019 and held a duly noticed public hearing on April 23, 2019; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order bring the City’s development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest.

NOW, THEREFORE, the City Council of the City of Chelan, Washington, do ordain as follows:

Section 1. **Incorporation of Recitals.** The foregoing Recitals are incorporated into this Ordinance.

Section 3. **Revising CMC Chapter 15.22.** CMC Chapter 15.22, Telecommunications Right-of-Way Use, is hereby revised as set forth in Exhibit A, attached.

Section 4. **Revising CMC Chapter 17.70.** CMC Chapter 17.70, Wireless Telecommunications Facilities, is hereby revised as set forth in Exhibit B, attached.

Section 5. **Repealer.** All ordinances or part of ordinances inconsistent with the provisions of this ordinance are hereby repealed

Section 6. **Severability.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 7. Effective Date. This Ordinance, or a summary thereof, shall be published in the official newspaper of the City of Chelan and take effect and be in full force thirty (30) days after passage and publication.

PASSED by the City Council of the City of Chelan, Washington, this 23th day of April, 2019.

APPROVED:

By: Mike Cooney
Mike Cooney, Mayor

ATTEST:

By: Peri Gallucci
Peri Gallucci, City Clerk

APPROVED AS TO FORM:

By: Quentin Batjer
Quentin Batjer, City Attorney

FILED WITH THE CITY CLERK: April 4, 2019
PASSED BY THE CITY COUNCIL: April 23, 2019
PUBLISHED: May 1, 2019
EFFECTIVE DATE: May 31, 2019
ORDINANCE NO.: 2019-1561

Ordinance 2019-1561 Exhibit A

Chapter 15.22

TELECOMMUNICATIONS – SMALL WIRELESS FACILITIES

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ARTICLE I. GENERAL

15.22.10 Purpose.

- A. In the exercise of its police powers, the City of Chelan has priority over all other uses of the right-of-way. The purposes of this Chapter are to:
1. Permit and manage reasonable access to the right-of-way of the City for small wireless telecommunication purposes on a nondiscriminatory basis;
 2. Establish clear and nondiscriminatory local guidelines, standards, and time frames which use federal guidelines for the exercise of local authority with respect to the regulation of right-of-way use;
 3. Encourage the provision of advanced and competitive small wireless telecommunications services on the widest possible basis to the businesses, institutions, and residents of the City;
 4. Conserve the limited physical capacity of the public rights-of-way held in public trust by the City;
 5. Ensure that the City's current and ongoing costs of granting and regulating private accesses to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs to the fullest extent permitted by state and federal law;
 6. Ensure that all service providers maintaining facilities or providing services within the City comply with the ordinances, rules, and regulations of the City;
 7. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare;
 8. Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development; and
 9. Promote a healthy urban environment and the public convenience and aesthetics.
- B. The purposes stated govern questions of interpretation and enforcement of this chapter, as implemented in the sound discretion of the administering officer. Notwithstanding any other provision, nothing in this chapter or any municipal action or inaction relating thereto is intended to create or expand any specific municipal duty or liability to any particular person or group or otherwise create or expand municipal tort liability for any purpose. This provision shall control all others in the event of conflict or ambiguity.

15.22.020 Definitions.

- A. For the purpose of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Words not defined herein shall be given the meaning set forth in Chapter 19.10. In the event of a conflict. Words not otherwise defined shall have their common and ordinary meaning:

“Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

“Applicant” means any person or corporation submitting an application for a franchise.

“City” means the City of Chelan, a municipal corporation of the state of Washington in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.

“City property” means any real property owned by City, whether in fee or other ownership estate of interest.

“Director” or “Administrator” means the Public Works Director or his/her designee.

“Excess capacity” means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility with the right-of-way that is or will be available for use for additional wireless telecommunications facilities.

“FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Franchise” or “franchise agreement” is a contract by which a Grantee is allowed to use City right-of-way for the purpose of carrying on the business in which it is generally engaged, including furnishing service to members of the public.

“Grantee” means the person, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this Chapter and the lawful successor, transferee or assignee of such person, firm or corporation.

“Grantor” means the City of Chelan acting through its City council.

“Light Pole” means a pole owned by the City and used primarily for lighting streets, parking areas, parks or pedestrian paths.

“Overhead facilities” means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

“Person” includes corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities, and individuals.

“Public right-of-way” or “right-of-way” means land acquired or dedicated for public roads and streets but does not include:

1. State highways;
2. Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the state parks and recreation commission; or
6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec 912 and related provisions of federal law that are not open for motor vehicle use.

“Service provider” is defined consistently with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.

“Small wireless,” “Small Wireless Facility,” and “Small Wireless Telecommunications Facility,” consistent with 47 CFR § 1.6002(l), means a facility that meets each of the following conditions:

1. The structure on which antenna facilities are mounted:
 - a. Is 50 feet or less in height, or
 - b. Is no more than 10 percent taller than other adjacent structures, or
 - c. Is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities.
2. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;
4. The facility does not require antenna structure registration;
5. The facility is not located on Tribal Lands; and
6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

“State” means the state of Washington.

“Structure” 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 services).

“Telecommunications service” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this Chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

“Traffic Signal Poles” means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers.

“Utility Pole” means a wooden pole designated and used primarily for the support of electrical wires, telephone wires or television cable.

“Washington Utilities and Transportation Commission” or “WUTC” means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services, and providers in the state of Washington to the extent prescribed by law.

“Wireless Telecommunications facilities” means the plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireless telecommunications service.

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

15.22.030 Registration and fees.

- A. Applicability. Except as otherwise provided herein, all service providers engaged in the business of the transmitting, supplying, or furnishing of small wireless telecommunications service originating, terminating, or existing with the City shall register with the City pursuant to Chapter 5.13 and pay all applicable fees.
- B. Exempt Facilities. The provisions of this Chapter shall not be applied to applications for the following:

1. Installation of a Small Wireless Facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.
2. Installation of a mobile cell facility (commonly referred to as “cell on wheels” or “cell on truck”) for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
3. Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

15.22.040 Application to existing franchise ordinances and agreements.

The enactment of this Chapter shall have no effect on any existing franchise agreement until:

- A. The expiration of said franchise agreement; or
- B. An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

ARTICLE II. FRANCHISE.

15.22.050 Franchise – Required.

A franchise shall be required of any telecommunications provider who desires to make use of Small Wireless Telecommunications Facilities which occupy rights-of-way and to provide telecommunications services to any person or area in the City. The franchise is a “master permit” within the meaning of RCW 35.99.010(3).

15.22.060 Franchise application.

- A. Contents. Any person that desires a franchise hereunder shall file an application with the following information:
 1. The identity of the applicant;
 2. A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services;

3. To the extent locations for installations are known, preliminary engineering plans, specifications and a map showing where the Small Wireless Telecommunications Facilities are to be located within the City, all in sufficient detail to identify:
 - a. The location and route requested for the applicant's proposed Small Wireless Telecommunications Facilities;
 - b. The location of applicant's overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the rights-of-way along the proposed route;
 - c. The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate;
4. If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way and to the extent specific locations are known:
 - a. The location proposed for the new ducts or conduits;
 - b. Evidence that there is sufficient capacity within the rights-of-way for the proposed Small Wireless Telecommunications Facilities;
5. A preliminary construction schedule and completion date;
6. Evidence that the applicant is registered to participate in the one-number locator service, as described in RCW Chapter 19.122, if applicable;
7. An accurate map showing the existing locations, if any, of any existing wireless telecommunication facilities in the rights-of-way, owned or operated by the applicant;
8. An application fee which shall be set by the City Council to recover City costs in accordance with applicable federal and state law;
9. A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations;
10. Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the City for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include:
 - a. the proposed location of the facility;
 - b. a description and scale image of the proposed facility; and
 - c. an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

11. Such other information as the Director, in his/her discretion, shall deem appropriate.

- B. Public Records. With narrow exceptions, Washington State's Public Records Act, Chapter 42.56 RCW, precludes the city from honoring requests for confidentiality.

15.22.070 Determination by the City.

Within the time periods established by state and/or federal law, as applicable, after receiving a complete application hereunder, the City shall grant or deny a franchise application. If the City denies a franchise, such denial must be based on one of the following:

- A. The financial and technical ability of the applicant;
- B. The legal ability of the applicant to provide the telecommunications service;
- C. The capacity of the rights-of-way to accommodate the applicant's facilities;
- D. The capacity of the rights-of-way to accommodate additional utility and wireless telecommunications facilities if the application is granted;
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;
- F. The public interest in minimizing the cost and disruption of construction with the rights-of-way;
- G. The service that the applicant will provide to the region;
- H. The effect, if any, on general public health, safety, and welfare in City's sole opinion if the application is granted;
- I. Applicable federal, state and local laws, regulations, rules and policies;
- J. Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest.

15.22.075 Application Processing and Appeal.

- A. Rejection for Incompleteness. Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.
- B. Processing Timeline. Wireless permit applications (including applications for other permits necessary to place or modify the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.
- C. Written Decision. In the event that an application is denied (or approved with conditions beyond the standard conditions set forth in CMC 15.22.200 et seq.), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.
- D. Appeals. Any person adversely affected by the decision of the Administrator may appeal that decision pursuant to CMC 2.80.210.

15.22.080 Franchise agreement.

No franchise shall be granted hereunder unless the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted. All franchises granted pursuant to this Chapter shall contain substantially similar terms and conditions.

15.22.090 Nonexclusive grant.

No franchise granted hereunder shall confer any exclusive right, privilege, or franchise to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

15.22.100 Rights granted.

- A. Limited Rights. No franchise granted hereunder shall convey any right, title, or interest in the rights-of-way, but shall be deemed a franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.
- B. Additional Authorizations Required. No franchise granted hereunder shall authorize or excuse a Grantee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use the rights-of-way. Grantee shall obtain the written approval of the facility or structure owner, including the City, if the Grantee does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way.
- C. No Warranty. No franchise granted hereunder shall be construed as any warranty of title.

15.22.110 Term of grant.

Unless otherwise specified in a franchise, a franchise granted hereunder shall be valid for a term of not more than 10 years.

15.22.120 Franchise territory.

A franchise granted hereunder shall be issued for all of the rights-of-way within the City.

15.22.130 Location of facilities.

Unless otherwise specified in a franchise, all facilities shall be constructed, installed, and located in accordance with the following terms and conditions:

- A. Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility, unless such location is not feasible due to the technology employed in the facility.

- B. A Grantee with written authorization to install overhead facilities shall install its telecommunications facilities on pole attachments to existing or replacement utility poles only, and then only if surplus space is available.
- C. Whenever any existing telephone facilities, electric utilities, cable facilities, or telecommunications facilities are located underground within rights-of-way, a Grantee with written authorization to occupy the same rights-of-way, must also locate its telecommunications facilities underground to the extent technologically feasible.
- D. Whenever any new or existing telephone facilities, electric utilities, cable facilities, or telecommunications facilities are located or relocated underground within rights-of-way, a Grantee shall concurrently relocate its facilities underground if technologically feasible.
- E. If requested, a Grantee shall provide the City with additional duct or conduit and related structures necessary to access the conduit; provided, that:
 - 1. The City enters into a contract with the Grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Grantee. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the Grantee. The Grantee shall state both contract rates in the contract. The City shall inform the Grantee of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City.
 - 2. Except as otherwise agreed by the Grantee and the City, the City shall agree that the requested additional duct or conduit space and related access structures will not be used by the City to provide telecommunications or cable television service for hire, sale, or resale to the general public.
 - 3. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the Grantee.
 - 4. The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract.

15.22.140 Utility right-of-way permits.

Except as provided in Article IV, Small Wireless Deployments, all Grantees are required to obtain utility right-of-way permits and pay all fees for Small Wireless Telecommunications Facilities as required by the City.

15.22.150 Nondiscrimination.

A Grantee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions,

rates or charges for the Grantee's services; provided, however, that nothing in this Chapter shall prohibit a Grantee from making any reasonable classifications among differently situated customers. This provision shall not apply to neutral host infrastructure services who solely provided infrastructure to personal wireless services carriers.

15.22.160 Amendment of franchise agreement.

- A. A new franchise application and grant shall be required of any Grantee that desires to extend its franchise territory or to locate its Small Wireless Telecommunications Facilities in rights-of-way which are not included in a franchise previously granted hereunder.
- B. A new franchise application and grant shall be required of any Grantee that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted.

15.22.170 Renewal applications.

A Grantee that desires to renew its franchise hereunder shall, not less than 180 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following information:

- A. The applicable information required pursuant to the franchise;
- B. Any other information required by the City.

15.22.180 Renewal determinations.

The City Council shall grant or deny a renewal application within the time periods established by state or federal law, as applicable. If the City determines to deny a franchise application, it shall make such determination consistent with Section 15.22.070. As part of any franchise renewal determination the City Council shall consider Grantee's compliance with the requirements of this Chapter and the franchise agreement.

15.22.190 Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the Grantee's obligations under the franchise, or the requirements of this Chapter, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the Grantee has been approved by the City.

ARTICLE III. CONDITIONS OF GRANT OF FRANCHISE

15.22.200 General duties.

All Grantees, before commencing any construction in the rights-of-way, shall comply with all requirements of this Article.

15.22.210 Interference with the rights-of-way.

No Grantee may locate or maintain its Small Wireless Telecommunications Facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or other persons, or other persons authorized to use or be present in or upon the rights-of-way. All such facilities shall be moved by and at the expense of the Grantee, temporarily or permanently, as determined by the City.

15.22.220 Damage to property.

No Grantee or any person acting on a Grantee's behalf shall take any action or permit any action to be done which may impair or damage any rights-of-way, including specifically City property, real or personal, or rights -of-way, or other property located in, on or adjacent thereto except in accordance with this Chapter.

15.22.230 Notice of work.

Unless otherwise provided in a franchise agreement, no Grantee, or any person acting on the Grantee's behalf, shall commence any nonemergency work in or about rights-of-way. Any private property owner whose property will be affected by a Grantee's work shall be afforded 10 working days advance written notice of such work.

15.22.240 Repair and emergency work.

In the event of an emergency or an emergency repair necessary to protect the public, restore service or mitigate further damage to the system, a Grantee may commence such repair and emergency response work as required under the circumstances; provided, the Grantee shall notify the Director as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

15.22.250 Maintenance of facilities.

Each Grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

15.22.260 Relocation or removal of facilities.

- A. The City may require Grantee to protect, support, temporarily disconnect, relocate, and remove, its Small Wireless Telecommunications Facilities within the right-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety. These projects may include but are not limited to, improving the rights-of-way for traffic conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, regardless of the type of entity (public or private) performing the project.
- B. The City shall notify the Grantee as soon as practicable of the need to relocate pursuant to subsection A above and shall specify the date by which the relocation shall be completed. The City shall consult with the Grantee on the construction schedule. The Grantee shall complete the relocation by the date specified by the City, unless a later date is set for completion pursuant to RCW 35.99.060(2), or by mutual agreement of the City and the Grantee.
- C. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to subsection A above shall be borne by Grantee, provided however Grantee shall not be limited in its ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.
- D. The City may require the relocation of Grantee's Small Wireless Telecommunications Facilities at Grantee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

15.22.270 Failure to relocate.

If a Grantee is required to relocate, change, or alter the Small Wireless Telecommunications Facilities constructed, operated and/or maintained hereunder and fails to do so, the City may cause such to occur.

15.22.280 Emergency removal or relocation of facilities.

The City retains the right and privilege to cut or move any Small Wireless Telecommunications Facilities located within the rights-of-way as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

15.22.290 Damage to City's facilities.

Unless directly and proximately caused by the sole negligence or malicious acts of the City, the City shall not be liable for any damage to or loss of any Small Wireless Telecommunications Facility within rights-of-way as a result of or in connection with any public works, public

improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the City.

15.22.300 Removal of unauthorized facilities.

Within 30 days following written notice from the Director, any Grantee, service provider, or other person that owns, controls, or maintains any unauthorized telecommunications system, facility, or related appurtenances within the rights-of-way shall, at its own expense, remove such facilities or appurtenances from the rights-of-way. If such Grantee fails to remove such facilities or appurtenances, the City may cause the removal and charge the Grantee for the costs incurred. A telecommunications or other facilities or system is unauthorized and subject to removal in the following circumstances:

- A. Upon expiration or termination of the Grantee's franchise;
- B. Upon abandonment of a facility within the rights-of-way;
- C. If the system or facility was constructed or installed without the prior grant of a franchise;
- D. If the system or facility was constructed or installed without the prior issuance of a required utility right-of-way permit;
- E. If the system or facility was constructed or installed at a location not permitted by the Grantee's franchise; Any such other reasonable circumstances deemed necessary by the Director.

15.22.310 Restoration of rights-of-way or other property.

Restoration shall comply with the following requirements:

- A. When a Grantee, or any person acting on its behalf, does any work in or affecting any rights-of-way, or any other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same condition which existed before the work was undertaken.
- B. If weather or other conditions do not permit the complete restoration required hereunder, the Grantee shall temporarily restore the affected rights-of-way or other property. Such temporary restoration shall be at the Grantee's sole expense and the Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. A Grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting rights-of-way or any other property.
- D. All restoration shall comply with the City's Construction and Design Standards.

15.22.320 Facilities maps.

Each Grantee shall provide the City with an accurate as-built map or maps certifying the location of all telecommunications facilities within the City and particularly within rights-of-way. Each Grantee shall provide updated as-built maps annually.

15.22.330 Duty to provide information.

Within 30 days of a written request from the Director, or other department as the City Administrator may designate, each Grantee shall furnish the Director with information sufficient to demonstrate that:

- A. The Grantee has complied with all requirements of this Chapter;
- B. All fees due the City in connection with the telecommunications services and facilities provided by the Grantee have been properly collected and paid by the Grantee;
- C. All books, records, maps and other documents maintained by the Grantee with respect to its facilities within rights-of-way shall be made available for inspection by the Director.

15.22.340 Grantee insurance.

- A. As consideration for the issuance of a franchise, each Grantee shall secure and maintain the following liability insurance policies insuring both the Grantee and the City as an additional insured against claims for injuries to persons, death, or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Grantee:
 - 1. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
 - a. \$2,000,000.00 for bodily injury or death to each Person;
 - b. \$2,000,000.00 for property damage resulting from any one accident;
 - c. \$2,000,000.00 for all other types of liability; and
 - d. \$5,000,000 in the aggregate for bodily injury and property damage.
 - 2. Automobile liability for owned, non-owned, and hired vehicles with a combined single limit of \$2,000,000.00 for each accident;
 - 3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00; and
 - 4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$5,000,000.00.
 - 5. Excess umbrella liability policy with limits of no less than \$5,000,000 per occurrence and in the aggregate.

- B. The liability insurance policies required by this section shall be maintained by the Grantee throughout the term of the franchise, and such other period of time during which the Grantee is operating without a franchise or is engaged in the removal of its Small Wireless Telecommunications Facilities. Failure to maintain such insurance shall be grounds for cancellation. The Grantee shall provide an insurance certificate, together with an endorsement including the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any Small Wireless Telecommunications Facilities pursuant to said franchise. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Grantee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary and non-contributory insurance as respects the City, its elected and appointed officers, officials, employees, agents, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, its elected and appointed officers, officials, employees, consultants, agents, representatives, engineers, and volunteers shall be in excess of the Grantee's insurance and shall not contribute with it. Receipt by the City of any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee may utilize primary and excess liability insurance policies to satisfy the insurance policy limits required in this section. Grantee's excess liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.
- C. In addition to the coverage requirements set forth in this section, the Grantee must notify the City of any cancellation or reduction in said coverage. Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, the Grantee shall obtain and furnish to the City a replacement insurance certificate meeting the requirements of this section.
- D. Grantee's maintenance of insurance as required by this section shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Grantee.
- E. Upon approval by the Director and based on conditions set by the City in the franchise, the Grantee may self-insure under the same terms as required by this section. Further, the Director may modify these insurance requirements as he/she deems necessary to comply with the City's risk management policies or as otherwise approved by the City's Risk Manager, provided that any such changes provide adequate protection for the City.

15.22.350 General indemnification.

As consideration for the issuance of a franchise, the franchise shall include an indemnity clause substantially conforming to the following:

- A. Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend, and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives from any and all claims, costs, judgments, awards, or liability to any Person arising from injury, sickness, or death of any Person or damage to property:
1. For which the negligent acts or omissions of Grantee, its agents, servants, officers or employees in performing the activities authorized are the proximate cause;
 2. By virtue of Grantee's exercise of the rights granted herein;
 3. By virtue of the City's permitting Grantee's use of the rights-of-way or other City property;
 4. Based upon the City's inspection or lack of inspection of work performed by Grantee, its agents and servants, officers or employees in connection with work authorized on a Small Wireless Telecommunications Facility, rights-of-way or other City property over which the City has control pursuant to any franchise issued;
 5. Arising as a result of the negligent acts or omissions of Grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon a Small Wireless Telecommunications Facility, in any rights-of-way in performance of work or services;
 6. Based upon radio frequency emissions or radiation emitted from Grantee's equipment located upon a Small Wireless Telecommunications Facility, regardless of whether Grantee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.
- B. Grantee's indemnification obligations pursuant to subsection A of this section shall include assuming potential liability for actions brought against the City by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought against the City by the aforementioned employees is with respect to claims against the City arising by virtue of Grantee's exercise of its rights. In addition to the indemnification obligations throughout this Section, the obligations of Grantee under this subsection B shall be mutually negotiated between the parties. Grantee shall acknowledge that the City would not enter into an agreement without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee will waive its immunity under Title 51 RCW as provided in RCW 4.24.115.
- C. Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Grantee has been given prompt written notice by the City of any such claim, said indemnification obligations shall also extend to claims which are

not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim and has the right to approve any settlement or other compromise of any such claim.

- D. In the event that Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of Grantee, then Grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the City, and reasonable attorneys' fees of recovering under this Subsection.
- E. The obligations of Grantee under the indemnification provisions of this section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this section, however, are not to be construed to require the Grantee to hold harmless, defend, or indemnify the City as to any claim, demand, suit, or action which arises out of the sole negligence of the City. In the event that a court of competent jurisdiction determines that a franchise is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to provide that the Grantee's obligation to indemnify the City hereunder shall extend only to the extent of Grantee's negligence.
- F. Notwithstanding any other provisions of this section, Grantee assumes the risk of damage to its Small Wireless Telecommunications Facilities located in the rights-of-way and upon City property from activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from any the sole negligence or malicious action on the part of the City, its officers, agents, employees or contractors. Grantee releases and waives any and all such claims against the City, its officers, agents, employees and contractors. In no event shall the City be responsible for indirect, special, consequential, or punitive damages or loses, including but not limited to lost income or business interruption, whether or not a party has been advised of the possibility of such damage and notwithstanding the theory of liability in which an action may be brought. Grantee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Grantee's Small Wireless Telecommunications Facilities as the result of any interruption of service due to damage or destruction of Grantee's Small Wireless Telecommunications Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors.

- G. These indemnification requirements shall survive the expiration, revocation, or termination of a franchise issued thereunder.

15.22.360 Security fund.

- A. Prior to issuance of a franchise pursuant to this Chapter, each Grantee shall establish a permanent security fund with the City by depositing the amount of \$50,000, or such other amount as deemed necessary by the Director, with the City in cash, bond, or an unconditional letter of credit, based upon both operating history in rights-of-way, and City property and the cost of removal of the Grantee's facilities, which fund shall be maintained at the sole expense of the Grantee so long as any of the Grantee's Small Wireless Telecommunications Facilities are located within the rights-of-way.
- B. The fund shall serve as security for the full and complete performance of this Chapter and the franchise including any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City applicable to the construction, maintenance, repair, or removal of Small Wireless Telecommunications Facilities in the rights-of-way or upon City property.
- C. The City and the Grantee shall agree upon and specify in the franchise certain amounts which represent both parties' best estimate of the damages for failure to comply with the franchise issued thereunder. The liquidated damages provided in the franchise shall be the exclusive monetary remedy for the named breaches. Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the City in a proper case to:
1. Obtain judicial enforcement of a Grantee's obligations by means of specific performance, injunctive relief, mandamus, or other remedies at law or in equity;
 2. Consider any substantial violation or breach as grounds for forfeiture and termination of a franchise issued thereunder; and
 3. Consider any violation or breach as grounds for nonrenewal or nonextension of a franchise or issuance of a new franchise.
- D. Before any sums are withdrawn from the security fund, the City shall give written notice to the Grantee:
1. Describing the act, default or failure to be remedied, or the damages, costs, or expenses which the City has incurred by reason of Grantee's act or default regarding the installation, maintenance, repair, or removal of Small Wireless Telecommunications Facilities in the rights-of-way, or upon City property or in connection with restoration of the foregoing;

2. Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure regarding the installation, maintenance, repair, or removal of Small Wireless Telecommunications Facilities in the rights-of-way or in connection with the restoration of the foregoing, if applicable;
 3. Providing a reasonable opportunity for Grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
 4. That the Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.
- E. Grantees shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.
- F. Upon termination or expiration of a franchise all funds remaining in the Security Fund shall be returned to the Grantee within 30 days after removal of Grantee's Small Wireless Telecommunications Facilities within the rights-of-way.

15.22.370 Performance and maintenance bonds.

- A. Grantee performing work in the rights-of-way must provide a performance bond written by a corporate surety acceptable to the City equal to at least one hundred, fifty percent (150%) of the estimated cost of completing or removing the telecommunications facilities and restoring the rights-of-way or City property to its pre-construction condition. The Director may, at his/her discretion, waive the bonding requirement for specific projects. This bond may be placed for the entirety of the Grantee's projects provided that Grantee is able to quantify the full estimated cost of its deployment of telecommunications facilities. If a Grantee provides a bond on a per project basis, such Grantee is permitted to increase the bond for future projects, or if a project is complete, Grantee may apply the bond to other projects in the rights-of-way. The purpose of this bond is to guarantee completion or removal of partially completed or nonconforming Small Wireless Telecommunications Facilities, and to fully restore the rights-of-way and City property to their pre-construction condition.
- B. If required by the City, a Grantee shall furnish a two (2) year warranty bond, or other surety acceptable to the City, upon the completion of Grantee's construction work, including any restoration work, within the rights-of-way. The warranty bond amount will be equal to fifteen percent (15%) of the documented final cost of the construction and restoration work.
- C. The performance bond shall guarantee, to the satisfaction of the City:
1. Timely completion of construction;
 2. Construction in compliance with applicable plans, permits, technical codes and standards;
 3. Proper location of the facilities as specified by the City;
 4. Restoration of the rights-of-way and any other property affected by the construction;

5. The submission of as-built drawings after completion of the work;
6. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

15.22.380 Coordination of construction activities.

All Grantees are required to cooperate with the City and with each other.

- A. Each Grantee shall meet with the City, other Grantees and users of the rights-of-way annually or as determined by the City to schedule and coordinate construction in rights-of-way.
- B. All construction locations, activities, and schedules shall be coordinated, as ordered by the Director to minimize public inconvenience, disruption, or damages.

15.22.390 Assignments or transfers of grant of franchise.

- A. A franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Grantee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days of the assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this section, no assignment or transfer of a franchise shall be deemed to occur based on the public trading of Grantee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of a franchise.
- B. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control (for example, management of Grantee or its Small Wireless Telecommunications Facilities) of the Grantee or of the ownership or working control of the Grantee's Small Wireless Telecommunications Facilities within the City, or of the ownership or working control having ownership or working control of the Grantee or of the Grantee's Small Wireless Telecommunications Facilities within the City, or of control of the capacity or bandwidth of the Grantee's small wireless telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to a franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Grantee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Grantee within sixty (60) days following the closing of the transaction.

15.22.400 Notice and duty to cure.

In the event that the Director believes that grounds exist for revocation of a franchise, the Grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and

concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding 30 days to furnish evidence that:

- A. Corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance.
- B. Rebuts the alleged violation or noncompliance.
- C. It would be in the public interest to impose some monetary damages, penalty, or sanction less than revocation.

15.22.410 Revocation hearing.

In the event that a Grantee fails to provide evidence reasonably satisfactory, as provided hereunder, to the Director, he/she shall refer the apparent violation or noncompliance to the City. The City shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

15.22.420 Standards for revocation.

If persuaded that the Grantee has violated or failed to comply with a material provision of this Chapter or of a franchise or applicable codes, ordinances, resolutions, or statutes, the City shall determine whether to revoke the franchise, and issue a written decision relating thereto, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of 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;
- F. Whether the violation was voluntarily disclosed, admitted or cured.

ARTICLE IV. SMALL WIRELESS DEPLOYMENT.

15.22.450 Application Process.

- A. Overview. In order to manage its rights-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City, the City has adopted this administrative process for the deployment of Small Wireless Facilities. The City and applicant for a franchise and other permits associated with the deployment of Small Wireless Facilities face challenges in coordinating applicable legislative and administrative processes under the Federal Communications Commission (FCC) regulations. A franchise for the use of the City's right-of-way is a contract which requires approval by the City Council. The small wireless

permits are issued by the Director of the Planning Department or his/her designee. Applicants are encouraged and expected to provide all related applications in one submittal, unless they have already obtained a franchise.

B. Application Process. The Director of the Public Works Department or his/her designee is authorized to establish franchise and other application forms to gather the information required by these ordinances from applicants and to determine the completeness of the application process as provided herein. The application shall include Parts A, B, and C as described below.

1. Franchise. The process typically begins with and depends upon approval of a franchise for the use of the public right-of-way to deploy Small Wireless Facilities if any portion of the applicant's facilities are to be located in the right-of-way. A complete application for a franchise is designated as Part A. An applicant with a franchise for the deployment of Small Wireless Facilities in the City may proceed to directly apply for a Small Wireless Facility permit/right-of-way permit and related approvals (Parts B and C). An applicant at its option may utilize phased development. Because franchises are required by federal law to be competitively neutral, the City has established a franchise format for use by all right-of-way users.
2. Small Wireless Facility Permits/Right-of-way permits. Part B of the application requires specification of the Small Wireless Facility components and locations as further required in the small wireless permit application described in Section 15.22.460.
3. Associated Permit(s). Part C of the application shall attach all associated permits' requirements such as applications or check lists required under the Critical Areas, Shoreline or SEPA ordinances. Applicants for deployment of Small Wireless Facilities in City Design Zones or for new poles shall comply with the requirements in Chapter 17.70.090.
4. Leases. An applicant who desires to attach a Small Wireless Facility to any utility pole or light owned by the City shall include an application for a lease as a component of its application. The Director is authorized to approve leases in the form approved for general use by the City Council for any utility pole or light pole in the right-of-way. Leases for the use of other public property, structures or facilities shall be submitted to the City Council for approval.

15.22.460 Small Wireless Permit Application.

The following information shall be provided by all applicants for a small wireless permit:

- A. The application shall provide specific locational information including 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, and junction boxes must be detailed. 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:

1. The location of overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the rights-of-way within 250 feet from the proposed site.
 2. The specific trees, structures, 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.
 3. 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.
 4. If the site location includes a replacement or new light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk 150 feet upstream and downstream of the existing light.
 5. Compliance with the aesthetic requirements of Chapter 17.70.090.
- B. 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, as well as assurances that the specific pole can withstand wind and seismic loads, from the pole owner, unless the pole owner is the City. Submission of evidence of a lease agreement between the owner and the applicant is 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.
- C. 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.
- D. 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 the following:
1. 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 which is not in front of the same residential parcel.
 2. 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.
- E. Any application for a small wireless permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW. Further, any application proposing Small Wireless Facilities in Shoreline Management Zones or in

Critical Areas must indicate that the application is exempt or comply with the review processes in such codes.

- F. 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 be compliant 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 which 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.
- G. 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.
- H. A professional engineer licensed by the State of Washington shall certify in writing, over 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 reasonably withstand wind and seismic loads.
- I. A traffic control plan.
- J. The Small Wireless Facilities permit shall include those elements that are typically contained in the right-of-way use permit to allow the applicant to proceed with the build-out of the Small Wireless Facility deployment.
- K. 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.
- L. Such other information as the Director, in his/her discretion, shall deem appropriate to effectively evaluate the application based on technical, engineering and aesthetic considerations.

15.22.470 Review Process.

- A. Review. The following provisions relate to review of applications for a Small Wireless Facility permit.
 - 1. Only complete applications for a small wireless permit containing all required submission elements described in 15.22.460 shall be considered by the City. Incomplete applications that are not made complete by the applicant within sixty (60) days of initial submission of the application materials shall be deemed withdrawn.
 - 2. 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 Chapter 17.70.090, except as provided in subsection B below.

3. Vertical clearance shall be reviewed by the Director to ensure that the Small Wireless Facilities will not pose a hazard to other users of the rights-of-ways.
 4. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, traffic warrants, city ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement pole or new pole must: be physically possible, cannot obstruct vehicular or pedestrian traffic or the clear zone, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.
 5. No equipment shall be operated so as to produce noise in violation of the City's noise standards.
 6. 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.
 7. The City shall make every reasonable effort, consistent with any applicable provisions of state or federal law, and the preservation of the City's health, safety and aesthetic environment, to comply with the Federal presumptively reasonable time periods for review of facilities for the deployment of Small Wireless Facilities to the fullest extent possible.
- B. Small wireless deployment in areas designated as Design Zones pursuant to section 17.70.090 as well as new non-City owned poles, or replacement poles deviating from the pole design standards adopted pursuant to Chapter 17.70.090, are subject to review pursuant to Chapter 17.70.
- C. 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 Section 17.70.030 when the modification does not defeat the concealment elements of the Small Wireless Facility.
- D. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 U.S.C. § 253 and 47 U.S.C. § 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 which 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.
- E. Final Decision. Any decision by the Director shall be final and not be subject to administrative appeals.

- F. 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.
- G. Withdrawal. Any applicant may withdraw an application submitted pursuant to CMC 15.22.460 at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or 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 of Public Works, or his/her designee'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 of Public Works, or his/her designee's decision, there shall be no refund of all or any portion of such fee.

15.22.480 Permit Requirements.

- A. The Grantee of any permit shall comply with all of the requirements within the small wireless permit.
- B. Small Wireless Facilities installed pursuant to a Small Wireless Facility permit may proceed to install the approved Small Wireless Facilities without the need for an additional right-of-way use permit if construction is commenced within thirty (30) days of approval by providing email or written notice to the Director. Facilities approved in a small wireless permit in which installation has not commenced within thirty (30) days of the approval of a Small Wireless Facility permit 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.
- C. 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.
- D. Permit Time Limit. Construction of the Small Wireless Facility must be completed within six (6) months after the approval date by the City, except where the delay is caused by the fiber and/or power providers. The Grantee may request one (1) extension to be limited to six(6) months, if the applicant cannot construct the Small Wireless Facility within the original six (6) month period.
- E. 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.

15.22.490 Modifications to Small Wireless Facilities.

- A. If a Grantee desires to make a modification to an existing Small Wireless Facility, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a Small Wireless Facility permit.
- B. 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 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. Right-of-way use permits may be required for such routine maintenance, repair or replacement

15.22.500 Consolidated Permit.

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 Planning 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.

ARTICLE V FEES

15.22.510 Application and review fee.

Any applicant for a franchise pursuant to this Chapter shall pay an application and review fee or fee deposit in an amount as determined by the City Council. This application and review fee covers the actual costs associated with the City's initial review of the application; provided, however, that the applicant shall be required to pay all necessary permit fees. This application and review fee shall be deposited with the City as part of the application filed pursuant to this Chapter.

15.22.520 Other City costs.

All Grantees shall, within 30 days after written demand therefor, reimburse the City for all direct and actual costs and expenses incurred by the City in connection with any grant, modification, amendment, renewal, or transfer of any franchise.

15.22.530 Permit fee.

Prior to issuance of a right-of-way permit or Small Wireless Facility permit, the applicant shall pay a permit fee in an amount as determined by the City Council.

15.22.540 Painting poles.

Any person erecting or maintaining poles under authority of this chapter shall, under order of the director, paint or repaint its poles to such height and in such colors and at such times as the director or his/her designee may reasonably direct. (Ord. 1174 § 1 (part), 2000).

15.22.550 Accommodating moving of building(s) and/or equipment.

Any person maintaining overhead telecommunication facilities in a public right-of-way shall, upon seven calendar days' notice from the director, disconnect or move said facilities to allow for the moving of building(s) and/or equipment across or along any such public rights-of-way; provided, however, that the advance notice may be reduced to twenty-four hours if the facilities are below the minimum clearance set by law or regulation or in the case of an emergency. The cost of moving such facilities shall be borne as follows:

- A. By the person owning said facilities if the wires, cables or appurtenances are below the minimum vertical clearance required by state law, city ordinance, or rules of the director, above the surface of the public rights-of-way, and no adjustment would be necessary if the minimum clearance had been maintained; and
- B. By the person desiring to move the building(s) and/or equipment under all other circumstances.

15.22.560 Tree trimming.

Any telecommunications carrier required by state statute or regulation to trim or remove trees which may interfere with their facilities shall ensure that their tree trimming activities protect the appearance, integrity and health of the trees to the extent reasonably possible. The telecommunications carrier shall prepare and maintain a tree trimming schedule to ensure compliance with this provision and to avoid exigent circumstances where tree cutting, trimming or removal is necessary to protect the public safety or continuity of service without the regard for the appearance, integrity or health of the trees that planned maintenance would otherwise allow. The telecommunications carrier shall submit the schedule and a plan showing the location of tree trimming activities and a description of techniques and methodology used in such tree trimming to the director. Except where exigent circumstances do not permit, the telecommunications carrier or public utility shall give the owner the property on which the trees are located at least five business days' advance written notice of the tree trimming.

15.22.570 Joint trenching.

Recognizing that trenching and excavation within public rights-of-way can significantly degrade the quality and longevity of street surfacing and seriously inconvenience the public, all Grantees shall afford other telecommunications carriers, public utilities, and the city an opportunity to share in the use of their excavations and trenches within public rights-of-way. In the event that the city, a telecommunications carrier, or a public utility desires to share in a Grantee's excavation, it shall provide a written request to do so. Joint use of excavations shall be subject to the following conditions:

- A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;
- B. A Grantee desiring to share in an excavation may be required to pay the fair and reasonable pro rata cost of said excavation. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- C. Either party may deny such request for safety reasons.

Ordinance 2019-1561 Exhibit B
Chapter 17.70
WIRELESS
TELECOMMUNICATIONS
FACILITIES

Sections:

17.70.010 Purpose.

17.70.015 Definitions.

17.70.020 Permits and exemptions.

17.70.030 General siting criteria.

17.70.040 Large satellite dish antenna(s) – Development standards.

17.70.050 Amateur radio towers – Development standards.

17.70.060 Towers – Development standards.

17.70.070 Wireless communications facilities – Development standards.

17.70.080 Special exceptions.

17.70.010 Purpose.

A. In addition to implementing the general purposes of the comprehensive plan and development regulations, this chapter is intended to regulate the placement, construction, modification and appearance and safety associated with communication towers, amateur radio towers, telecommunications monopoles, satellite dish antenna(s), and related equipment. It provides adequate siting opportunities at appropriate locations within the city to support existing communications technologies and to encourage new technologies as needed for businesses and institutions to stay competitive.

A wide range of locations and options for the provision of wireless technology which minimize safety hazards and visual impacts sometimes associated with wireless communications facilities are provided. The siting of facilities on existing buildings or structures, collocation of telecommunications facilities on a single support structure, and visual mitigation tactics are encouraged to preserve neighborhood aesthetics and reduce visual clutter in the community. (Ord. 1352 § 8 Exh. 8 (part), 2008; Ord. 1214 § 1 (part), 2001).

B. The objectives of this chapter follow:

1. Protect existing land uses, views, historic character, and environmental impacts from the placement and deployment of telecommunications facilities, including small wireless

facilities.

2. Establish clear and nondiscriminatory permitting requirements
3. Establish aesthetic controls regulating the wireless industries placement of equipment and facilities that protect visual resources and are consistent with federal and state requirements.
4. Encourage, where feasible and technology allowing, the siting of macro and small wireless communication facilities preferentially as such: collocation, concealment, camouflage, screening.

17.70.015 Definitions.

“Antenna” means any apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, utility pole, building or other structure for the purpose of providing wireless services or com-mingled services.

“Co-location” means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Provided that, for purposes of Eligible Facilities Requests, “collocation” means 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.

Cell on Wheels COW: temporary wireless facility, used for special events, during repair, or in emergencies.

“Equipment shelter” shall mean the structure associated with a wireless communications facility or wireless communications facility that is used to house electronic, radio, battery, and power supply systems or equipment.

“HDCA” Historic Downtown Chelan Association

“Large satellite dish” shall mean any satellite dish antenna(s) whose diameter is greater than one meter in residential zones or two meters in industrial or commercial zones.

“Macro facility” means is a large wireless communication facility that provides radio frequency coverage for a wireless telephone network. Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cell facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers.

“Reception window obstruction” shall mean a physical barrier which would block an electromagnetic

signal.

“Satellite dish antenna(s)” shall mean a type of antenna(s) and supporting structure consisting of a solid, open mesh, or bar configured reflective surface used to receive and/or transmit radio frequency communications signals. Such an apparatus is typically in the shape of a shallow dish, cone, horn, or cornucopia.

“Small wireless facility (and small wireless network)”. A wireless facility and supporting equipment that meets the following criteria consistent with 47 CFR 1.6002(l) § 1.1312(e)(2):

1. The facilities— (i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of “antenna” in § 1.1320(d)), is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
4. The facilities do not require antenna structure registration under part 17 of this chapter; (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

“Small satellite dish” shall mean any satellite dish antenna(s) whose diameter is less than or equal to one meter located in any zoning district or two meters within industrial or commercial zones.

“Small wireless facility” has the same meaning as defined in 47 CFR 1.6002.

“Structure” 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 services).

“Tower” shall mean any built structure, including any guy wires and anchors, constructed for the support of antennas. This includes, but is not limited to, lattice towers, guy towers, wood or steel monopoles, and attached antennas.

“Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services included, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Unified enclosure” means a small wireless facility providing concealment of antennas and equipment within a single enclosure.

“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.

“Wireless communications facility” shall mean any unstaffed facility for the transmission and reception of radio or microwave signals used for commercial communication. A wireless communications facility provides services which include wireless, telephone, personal communications services (PCS), other mobile radio services, and any other service provided by wireless common carriers licensed by the Federal Communications Commission (FCC). A wireless communications facility may be attached to an existing structure or a freestanding tower. A wireless communications facility may consist of antenna(s) and related equipment and may include an equipment enclosure, screening, or a support structure. (Ord. 1352 § 8 Exh. 8 (part), 2008: Ord. 1214 § 1 (part), 2001).

17.70.020 Permits and exemptions.

A. Permits Required.

1. **Building Permits.** A building permit is required for all telecommunications facilities unless specifically exempted under subsection B of this section, Exemptions.
2. **Telecommunications Facility Permits.** A telecommunications facility permit (Type IA) is required for all telecommunications facilities which are not reviewed under special development permit (Type IVA) or general development permit (Type II) processes, except for wireless communications facilities which collocate on an existing tower, where adequate provisions for antennas and ground-mounted equipment exist (building permit and eligible facilities request).
3. **Combined Review.** Telecommunications facilities regulated under this section, requiring a Franchise agreement or not, which are proposed in conjunction with a building application for commercial or residential development shall not be required to obtain separate building permit approval or separate telecommunications facility permit approval. However, communications facilities will be reviewed according to the same criteria outlined in this section.
4. **Summary of Required Permits.** The appropriate permit procedure is delineated in the permitted land uses charts and summarized as follows:
 - a. **Small Satellite Dish Antenna(s).** Small satellite dish antenna(s) require no permits and are exempt under this section.

- b. Large Satellite Dish Antenna(s). Large satellite dish antenna(s) require a building permit and a telecommunications facility permit (Type IA). In the R-M and R-L zoning districts, large satellite dish antennas shall require a conditional use permit.
- c. Amateur Radio Towers. Amateur radio towers require a building permit and telecommunications facility permit (Type IA).
- d. Towers. towers and other freestanding support structures require a building permit and a special development permit (Type IVA) in all zoning districts where allowed, except the Warehousing and Industrial District (W-I) zone where a general development permit (Type IIA) is required. In the R-M and R-L zoning districts, towers shall require a conditional use permit.
- e. Wireless Communications Facilities.
 - i. Wireless communications facilities collocated on an existing tower, where adequate provisions for antennas and ground-mounted equipment exist, require a building permit and eligible facilities request.
 - ii. Wireless communications facilities attached to nonresidential structures within commercial and industrial zoning districts require a building permit and a telecommunications facility permit (Type IA) and compliance with concealment measures in 17.70.070 A-C.
 - iii. Wireless communications facilities attached to nonresidential structures within all other zoning districts require a building permit and a general development permit (Type IIA).
 - iv. Wireless communications facilities not attached to an existing structure and not mounted on a broadcast or relay tower (i.e., stand-alone or ground-mounted facilities with antenna(s)) require a building permit and telecommunications facility permit (Type IA).
 - v. Wireless communications facilities attached to a residential structure require a special development permit (Type IVA). Wireless monopoles, lattice, and guy towers, and existing antenna support structures extended in height, are regulated by the subsections that govern towers.
- f. Telecommunications Facilities utilizing the right of way: A Franchise Agreement pursuant to Title 15.22, known as a Master License, is required for any siting of

telecommunications facility within the rights of way.

- g. Small Wireless Permit application. Small wireless facilities shall comply with CMC 15.22.460 permit procedures and standards set forth in section 17.70 herein.
 - i. Small Wireless Facilities located in the right-of-way shall be processed in accordance to existing Franchise Agreement pursuant to CMC 15.22.460.
 - ii. Small Wireless Facilities located outside the right-of-way shall be processed as a Type 1B permit.
- h. Small Wireless Permit applications that include sites within the Downtown Planning Area, as describe in CMC 17.14.020, should include a non-binding recommendation from the HDCA regarding concealments elements to minimize visual impacts prior to determination of a complete application. This is a recommendation as HDCA will be consulted as part of the application review process.

	Type IA	Type IB	Type IIA	Type IIB	Type III	Type IIIB	Type IVA	Type IVB	Type V (Legislative)
	Telecom Permit								
Small Satellite Dish	Exempt								
Large Satellite Dish	Telecom Permit	Building permit			CUP for RM/RL Zones				
Amateur Radio Tower	Telecom Permit	Building permits							
Towers (freestanding support structures)		Building permit	In W/I				SDP or CUP		
Wireless Telecommunications Facilities									
1. Collocated on existing tower	Eligible facilities request	Building permit							
2. Attached to non-residential structure in commercial or W/I	Telecom permit	Building permit							
3. Attached to non-residential structures in all other zones		Building permit							
4. Not attached to existing building or tower (stand-alone)	Telecom Permit	Building permit							
5. Attached to residential structures (not allowed in R-L)		Building permit					SDP		
Small Cell/Wireless in ROW	ROW permit	Small Wireless Permit					SDP for new poles not designated in Franchise Agreement		Franchise Agreements Requirement
Small Cell/Wireless not in ROW		Small Wireless Permit					SDP for new poles not designated in Franchise Agreement		
Eligible Facilities Request	Telecom Permit								

B. Exemptions. The following antenna(s) shall be exempt from this chapter as follows:

1. VHF and UHF Receive-only Television Antenna(s). VHF and UHF receive-only antenna(s) shall not be required to obtain site plan approval nor shall they be required to obtain building permit approval. VHF/UHF antenna(s) shall be restricted to a height limit of no more than fifteen feet above the existing or proposed roof.
2. Small Satellite Dish Antenna(s). Small dish antenna(s) in all zones shall be exempt from obtaining site plan approval and shall not be required to obtain building permit approval. (Ord. 1533 § 6 (Exh. 75) (part), 2017; Ord. 1352 § 8 Exh. 8 (part), 2008; Ord. 1214 § 1 (part), 2001).
3. A COW (cell on wheels) or other temporary personal wireless telecommunications facility shall be permitted at a time and manner as determined by the city to address emergencies or for temporary placement of a wireless facility while an existing building mounted site undergoes redevelopment.

C. Timelines:

When a time limit for processing any telecommunications permits pursuant to CMC 19. 18 conflicts with the timelines in this section, the following timelines shall apply.

1. Macro facilities: The city has 30 days to determine if the submission is a complete application. All fees must be paid upon prior to processing and review of the application. Written notice of further incompleteness after an applicant has submitted supplemental requested information must be issued within ten days of the submission for the clock to toll (pause), otherwise the clock will resume once the submission is received by the city. The city shall be subject to the following timelines:

- Eligible facilities request: 60 days
- New Macro facility colocations: 90 days for colocations
- New Macro facility: 150 days for new towers or monopoles

2. Small Wireless: Once a Franchise Agreement is approved and fees are paid, the review period shall be ten days to determine completeness. If incomplete, the applicant submits requested information, the clock is reset to zero, otherwise the clock will resume once the submission is received by the city. The city shall be subject to the following timelines:

- Small cell colocation: 60 days
- Small cell, new structure or freestanding pole: 90 days

3. Batched applications: small cell wireless application may include more than one facility. However, the city reserves the right to deny any location or site based on criteria but shall not use the denial of one small cell to deny an entire permit. Batched permits shall be 90 days processing when an application includes both collocated and new poles/structures, otherwise the 60 day processing time shall apply when the batched application only includes collocation on existing support structures.

17.70.030 Eligible Facilities Request

Purpose: To implement section 6409 of Spectrum Act, which requires municipalities to approve eligible facilities requests for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this Section 20.171.030.

“Base Station”: 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:

- a. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- b. 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).
- c. Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subparagraph (i) and (ii) 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.
- d. The term does not include any structure that, at the time the Eligible Facilities Request application is filed with the City, does not support or house equipment described in subparagraph (1)(a) and (1)(b) above.

“Collocation”: The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

“Eligible Facilities Request”: 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:

- a. Collocation of new transmission equipment;
- b. Removal of transmission equipment; or
- c. Replacement of transmission equipment.

“Eligible support structure”: Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

“Existing”: A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

“Substantial Change”: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- a. For towers other than towers in the public rights-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 (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten (10) feet, whichever is greater;
- b. For towers other than towers in the public rights-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 (20) 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 (6) feet;
- c. 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 rights-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;

- d. It entails any excavation or deployment outside the current site;
- e. It would defeat the concealment elements of the eligible support structure; or
- f. 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.

“Tower”: 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 communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site.

“Transmission equipment”. Equipment that facilitates transmission for any FCC- licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

B. Application. Eligible Facilities Requests may be made by the applicant by submitting a written letter of request accompanied with a building permit application. The application shall be processed as a Type I permit (Telecom Permit). The application may not require the applicant to demonstrate a need or business case for the proposed modification.

C. Qualification as an Eligible Facilities Request. Upon receipt of an application for an Eligible Facilities Request, the Director shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

D. Timeframe for Review. Within sixty (60) days of the date on which an applicant submits an Eligible Facilities Request application, the Director shall approve the application unless it determines that the application is not covered by this Section.

E. Tolling of the Time Frame for Review. The sixty (60) day review period begins to run when

the application is filed and may be tolled only by mutual agreement by the Director and the applicant or in cases where the Director determines that the application is incomplete. The timeframe for review of an Eligible Facilities Request is not tolled by a moratorium on the review of applications.

1. To toll the timeframe for incompleteness, the Director shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.
2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
3. Following a supplemental submission, the Director will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

F. 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.

G. Failure to Act. In the event the Director fails to approve or deny a request for an Eligible Facilities Request within the timeframe 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.

17.70.040 General siting criteria for towers.

A. The permitted land uses charts identify zoning districts and the review process for telecommunications facilities. The development standards in this section address setback and other site specific location factors. Siting criteria for towers and wireless communications facilities are necessary to encourage the siting of those facilities in locations most appropriate based on land use compatibility, neighborhood characteristics, and aesthetic considerations. No general siting criteria are necessary for satellite dishes or amateur radio towers because these facilities are allowed within all zoning districts.

B. Generally, collocation on existing towers is encouraged by fewer standards and less complex permit procedures (refer to permitted land uses charts). Further, attachment of antenna(s) to existing nonresidential structures and buildings primarily within industrial, manufacturing, business park, and commercial zoning districts is preferable to new towers or monopoles. Feasibility studies prepared by qualified radio frequency engineers are required for applications for telecommunications facilities to demonstrate that locations on existing structures and/or higher ranked preferred siting locations have been explored by the permit applicant.

C. When a new tower is proposed, preferred locations are within the Warehouse and Industrial District (W-I) zone by utilizing Type IIA (i.e., general development permit) permit procedures.

1. Towers including monopoles shall be minimized by collocating wireless facilities on existing towers. New towers are most appropriately located in the W-I zoning district followed in order of preference by C- W, C-HS, T-A, PLF, R-M, and R-L zoning districts. The site considered shall be a minimum three hundred feet from residential structures unless locating at an existing wireless communications facility or Section 17.70.080, Special exceptions, criteria have been satisfied.

2. Wireless Communications Facilities. The following sites shall be considered by applicants as the preferred order for location of proposed wireless facilities including antenna(s), equipment, and equipment shelters. This section shall not apply to small wireless facilities. As determined feasible, and in order of preference, the sites are:

- a. Existing Towers. On any existing site or tower where a legal wireless telecommunications facility is currently located regardless of underlying zoning.
- b. Industrial, Manufacturing. Structures or sites used exclusively for industrial and manufacturing park uses within the Warehousing and Industrial District (W-I) zone. These are areas of more intensive land uses where a full range of public facilities are expected.

- c. Publicly Used Structures. Attached to existing public facilities such as water towers, utility structures, fire stations, bridges, and other public buildings within all zoning districts not utilized primarily for recreational uses. (Refer to rules and regulations specific to facilities located on city owned land, buildings, or public right-of-way, Chapter 15.22.)
- d. Business, Commercial and Public Facilities Sites. Structures or sites used for retail, commercial, and office uses. These are areas of more intensive land uses where a full range of public facilities is expected. These zones in order of priority are C-W, C-HS, T-A and PLF.
- e. Structures or sites which are not used wholly for residential use, including residential accessory structures (e.g., detached garage). Where the installation complies with all FCC regulations and standards, institutional structures, places of worship, and other nonresidential sites may be considered.
- f. Residential Structures. Wireless communications facilities attached to residential structures are not permitted in the R-L zoning district.

17.70.050 Large satellite dish antenna(s) – Development standards.

A. Standards for All Zoning Districts. The following standards shall be applied to all proposed large satellite dish antenna(s):

1. Satellite dish antenna(s) reviewed under this section shall not be located within any front yard or side yard building setback areas.
2. Mountings and satellite dishes should be no taller than the minimum required for the purposes of obtaining an obstruction free reception window.
3. To the extent technically feasible, specific paint colors may be required to allow the large satellite dish and mounting structures to blend better with their setting.
4. Screening of all large satellite dish antenna(s) shall be provided with one or a combination of the following methods: fencing, walls, landscaping, structures, or topography which will block the view of the antenna(s) as much as practicable from any street and from the yards and main floor living areas of residential properties within approximately five hundred feet. Screening may be located anywhere between the antenna(s) and the above-mentioned viewpoints. Landscaping for the purposes of screening shall be maintained in healthy condition.
5. No satellite dish antenna(s) shall be used for the purposes of signage or message display of any

kind.

6. Construction plans and final construction of the mounting bases of all large satellite dish antenna(s) shall be approved by the city building department.

7. Aluminum mesh dishes should be used whenever possible instead of a solid fiberglass type.

B. Additional Standards in Residential Zones – Large Satellite Dish Antenna(s).

1. Only one large dish satellite antenna shall be allowed on each property.

2. Large satellite dish antenna(s) shall not be mounted on roofs.

3. Large satellite dish antenna(s) shall not exceed twelve feet in diameter and fifteen feet in height, including their bases. Height shall be measured from existing grade.

4. A solid visual screen (ninety percent solid or more) pursuant to landscaping standards shall be provided as high as the center of the dish when viewed from off the site. Above the center of the dish, the screening should be fifty percent or more to the top of the antenna(s) when viewed from off the site. Evergreen plants shall be used to accomplish year-round screening and shall be large enough at installation to meet appropriate screening standards.

C. Additional Standards in Nonresidential Zones – Large Satellite Dish Antenna(s).

1. Antenna(s) may be either roof-mounted or ground-mounted.

2. Ground-Mounted.

- a. Ground-mounted antenna(s) shall not exceed twelve feet in diameter and fifteen feet in height. Height shall be measured from existing grade.
- b. Ground-mounted antenna(s) shall be located outside of any required setback and required landscaped area and preferably located in service areas or other less visible locations.
- c. From the time of installation, ground-mounted antenna(s) shall be solidly screened (ninety percent or more) as high as the center of the dish when viewed from off the site. Solid screening shall be provided as high as the dish if the proposed location abuts an adjoining residential zone.

3. Roof-Mounted.

- a. Roof-mounted large satellite antenna(s) shall not exceed twelve feet in diameter and fifteen feet in height, including their bases. Height shall be measured from the roof line.

- b. Roof-mounted antenna(s) should be placed as close to the center of the roof as possible. If the dish is still visible from any point within approximately five hundred feet as viewed from ground level, additional screening shall be required to supplement the screening provided by the roof itself. If the dish is not visible from five hundred feet or less, no additional screening will be necessary.
- c. Roof-mounted antenna(s) shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, and can include penthouse screening, parapet walls, or other similar screening. (Ord. 1352 § 8 Exh. 8 (part), 2008; Ord. 1214 § 1 (part), 2001).

17.70.060 Amateur radio towers – Development standards.

A. Development Standards for All Zoning Districts.

1. Amateur radio towers reviewed under this section shall not be located within any easements, the front yard or side or rear yard building setback areas.
2. Mountings and amateur radio towers should be no taller than the minimum required for the purposes of obtaining an obstruction free reception window.
3. To the extent technically feasible, and in compliance with safety regulations, specific paint colors may be required to allow the tower to blend better with its setting.
4. Screening of the bases of ground-mounted amateur radio towers shall be provided with one or a combination of the following methods: fencing, walls, landscaping, structures, or topography which will block the view of the antenna(s) as much as practicable from any street and from the yards and main floor living areas of residential properties within approximately five hundred feet. Screening may be located anywhere between the base and the above-mentioned viewpoints. Landscaping for the purposes of screening shall be maintained in a healthy condition. Bases of amateur radio towers shall be solidly screened by a view obscuring fence, wall, or evergreen plantings at least six feet in height.
5. Amateur radio towers shall not be used for the purposes of signage and shall not display a message of any kind.
6. Construction plans and final construction of the mounting bases of amateur radio towers covered by this section shall meet the structural design requirements of this section and shall be approved by the city building department.

7. Amateur radio towers may be ground- or roof-mounted; however, ground-mounted towers must be located at a point farthest from lot lines as feasible.

B. Additional Standards in Residential Zones – Amateur Radio Towers.

1. Towers shall not be constructed or used for commercial use.
2. The height of a ground-mounted tower may not exceed sixty-five feet unless a proposal demonstrates that physical obstructions impair the adequate use of the tower. Telescoping towers may exceed the sixty-five foot height limit only when extended and operating. The combined structure of a roof-mounted tower and antenna(s) shall not exceed a height of twenty-five feet above the existing roofline.
3. Towers shall be located at a point farthest from lot lines as feasible, or the point farthest from residential structures on abutting properties.
4. In residential zones, the base of a ground-mounted tower shall be screened with fencing, walls, landscaping, or other means such that the view of the antenna(s) base is blocked as much as practicable from any street and from the yards and main living floor areas of surrounding residential properties. The screening may be located anywhere between the antenna(s) and the above-mentioned viewpoints. Landscaping that qualifies for the purpose of screening shall be maintained in a healthy condition.

5. Applications shall document that the proposed tower and any mounting bases are designed to withstand wind and seismic loads as established by the International Building Code. (Ord. 1352 § 8 Exh. 8 (part), 2008; Ord. 1214 § 1 (part), 2001).

17.70.070 Towers – Development standards.

A. Development Standards for All Zoning Districts.

1. The applicant shall demonstrate that the proposed location was selected pursuant to the siting criteria of Section 17.70.040. Placement of a tower shall be denied if an alternative placement of the antenna(s) on a building or other existing structure can accommodate the communications needs. Applications shall be required to provide documentation that reasonable efforts to identify alternative locations were made.
2. Owners and operators of a proposed tower shall provide information regarding the opportunity for the collocation of other antenna(s) and related equipment. If feasible, provision for future collocation may be required.
3. All towers shall be the minimum height necessary to achieve the applicant's coverage and/or capacity objectives, and any collocation required by the city.
4. Towers reviewed under this section shall not be located within any required building setback areas.
5. Towers shall not be used for the purposes of signage to display a message of any kind.
6. To the extent technically feasible and in compliance with safety regulations, specific colors of paint may be required to allow the tower to blend better with its setting. The tower shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Before and after photos or drawings shall be submitted demonstrating the camouflaging or screening techniques used.
7. Any fencing required for security shall meet general fencing requirements of the city.
8. A Washington licensed professional engineer shall certify in writing, over his or her seal, that both construction plans and final construction of the towers are designed to reasonably withstand wind and seismic loads as established by the International Building Code.
9. All towers shall be removed by the facility owner within twelve months of the date they cease to be operational, or if the facility falls into disrepair and is not maintained. Disrepair includes structural features, paint, landscaping, or general lack of maintenance which could result in safety or visual impacts. The tower to be removed includes the freestanding support structure, attached antenna(s), and related equipment, including the concrete pad on which the support structure is

located, if applicable.

B. Additional Standards in Residential Zones – Towers.

1. Commercial towers shall not be allowed in the residential (R-L and R-M) zones unless they meet the special exception criteria of Section 17.70.070.
2. The combined tower and antenna(s) shall not extend more than fifteen feet above the maximum height of the zone for which it is proposed. A height bonus of fifteen feet may be allowed by the approval authority when collocation is specifically provided for on the tower.
3. The attached antenna(s) shall not dominate the appearance of the structure.
4. Towers shall be located at a point farthest from lot lines as feasible.
5. The base of a ground-mounted tower shall be screened with fencing, walls, landscaping, or other means such that the view of the antenna(s) base is blocked as much as practicable from any street and from the yards and main living floor areas of surrounding residential properties. Before and after photos or drawings shall be submitted demonstrating the camouflaging or screening techniques used. The screening may be located anywhere between the antenna(s) and the above-mentioned viewpoints. Landscaping that qualifies for the purpose of screening shall be maintained in a healthy condition.

17.70.070 Wireless communications equipment – Development standards.

A. Development Standards for All Zoning Districts. The following standards shall be applied to all wireless equipment, antennas and equipment shelters, exclusive of the tower, except for small wireless facilities in the right of way, which are regulated by Section 17.70.090. Wireless monopoles, lattice and guy towers, and existing pole structures extended in height are regulated by the provisions that govern towers, Section 17.70.060 of this chapter, and may be subject to Section 17.70.030-Eligible Facilities Requests.

1. Placement of a new freestanding wireless communications facility shall be denied if placement of the antenna(s) on an existing structure can accommodate the operator's communications needs. The collocation of a proposed antenna(s) on an existing tower or placement on an existing structure shall be explored and documented by the operator in order to show that reasonable efforts were made to identify alternate locations.
2. No wireless equipment reviewed under this section shall be located within required building setback areas.
3. The combined antenna(s) and supporting structure shall not extend more than fifteen feet above the existing or proposed roof structure.

4. No wireless equipment shall be used for the purposes of signage or message display of any kind, other than that required by law.

5. Location of wireless communications antenna(s) on existing buildings or other structures shall be screened or camouflaged to the greatest practicable extent by use of shelters, compatible materials, location, color, and/or other stealth tactics to reduce visibility of the antenna(s) as viewed from any street or residential property. Before and after photos or drawings shall be submitted demonstrating the camouflaging or screening techniques used. If within the Downtown Planning Area, as described CMC 17.14.020, evidence that HDCA have been contacted and their input has been incorporated into the screening or camouflaging should be provided with the application.

6. Screening of wireless equipment shall be provided with one or a combination of the following materials: fencing, walls, landscaping, structures, or topography which will block the view of the antenna(s) and equipment shelter as much as practicable from any street and from the yards and main floor living areas of residential properties within approximately five hundred feet. Screening may be located anywhere between the base and the above-mentioned viewpoints. Landscaping for the purposes of screening shall be maintained in a healthy condition.

7. Any fencing required for security shall meet general fencing requirements of the city.

8. Construction plans and final construction of the mountings of wireless antenna(s) and equipment shelters shall be approved by the city building department. Applications shall document that the proposed tower and any mounting bases are designed to reasonably withstand wind and seismic loads.

9. A wireless communications facility shall be removed by the facility owner within twelve months of the date it ceases to be operational, or if the facility falls into disrepair and is not maintained. Disrepair includes structural features, paint, landscaping, or general lack of maintenance which could result in safety or visual impacts. The wireless communications facility to be removed consists of antenna(s) and related equipment and may include equipment enclosure, screening, or support structure, including the concrete pad on which the support structure is located, if applicable.

B. Additional Standards in Residential Zones – Wireless Communications Facilities.

1. Commercial telecommunications facilities shall be allowed in the residential zones only when attached to public facilities or when the special exception criteria in Section 17.70.080 of this chapter are satisfied and a special development permit is obtained pursuant to Section 17.56.280 of this code. For purposes of this provision, “public facilities” shall mean those facilities owned by a public entity.

2. The antenna(s) shall not dominate the structure upon which it is attached and shall be visually concealed utilizing color and compatible material to camouflage the facility to the greatest extent

feasible.

3. Associated aboveground equipment shelters shall be minimized and shall not exceed two hundred forty square feet (e.g., twelve by twenty feet) unless operators can demonstrate that more space is needed. Shelters shall be painted a color that matches existing structures or the surrounding landscape. The use of concrete or concrete aggregate shelters is not allowed. A solid visual screen (ninety percent solid or more) shall be created around the perimeter of the shelter. Operators shall consider undergrounding equipment if technically feasible or placing the equipment within existing structures.

C. Additional Development Standards in Nonresidential Zones – Wireless Communications Facilities. Associated aboveground equipment shelters shall not exceed two hundred forty square feet (e.g., twelve by twenty feet) unless operators can demonstrate that more space is needed. A solid visual screen (ninety percent solid or more) shall be created around the perimeter of the shelter. Operators shall consider undergrounding equipment if technically feasible or placing the equipment within an existing structure. Aboveground equipment shelters for antenna(s) located on buildings shall be located within, on the sides or behind the buildings and screened to the fullest extent possible. Screening of exterior shelters shall provide colors and materials which blend with surrounding structures. (Ord. 1352 § 8 Exh. 8 (part), 2008; Ord. 1214 § 1 (part), 2001).

17.70.080 Special exceptions.

When adherence to all development standards of this chapter would result in a physical barrier which would materially inhibit the ability to provide service, a special exception may be permitted, provided both criteria outlined below are met. Exceptions do not apply to variations from the International Building Code. A variance pursuant to Chapter 17.64 of this code is required for variations from applicable zoning regulations not described in this chapter.

The final approval authority for granting of the special exception shall be the same as that of the permit approving the antenna(s) location. A request for a special exception shall be processed in conjunction with the permit approving the antenna(s) location and shall not require any additional application or fees.

Upon review of special exception requests, the approval authority shall consider first those standards having the least effect upon the resulting aesthetic compatibility of the antenna(s) or tower with the surrounding environment. The approval authority shall review setback, size, screening requirements, and height limits.

A. Special Exception Criteria – General Criteria.

1. The applicant shall justify the request for a special exception by demonstrating that the obstruction

or inability to effectively provide service is the result of factors beyond the property owner's or applicant's control, taking into consideration potential permitted development on adjacent and neighboring lots with regard to future reception window obstruction. Pictures, drawings (to scale), maps and/or manufacturer's specifications, and other technical information as necessary, should be provided to demonstrate to the city that the special exception is necessary.

2. The applicant for a special exception shall demonstrate that the proposed materials, shape, and color of the antenna(s) will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts.

B. Large Satellite Dish Antenna(s) – Special Exceptions.

1. Residential Zones. Modifications to requirements for setbacks, size, screening and maximum height limit may be considered by special exception. If a special exception from the height limit for a ground-mounted dish is requested, the height of the dish shall be limited to a maximum of eighteen feet.

Only if these modifications would still block an electromagnetic signal shall rooftop location be considered. If a special exception is sought to obtain a rooftop location, the diameter of the dish shall be limited to six feet and maximum permitted height shall be fifteen feet above the roofline. The approval authority may require the applicant to place the antenna(s) in an area on the roof which takes into consideration view blockage and aesthetics, provided there is a usable signal.

2. Nonresidential Zones.

a. Ground-Mounted Antenna(s). Exceptions to be first considered shall be from setback, landscape and service area requirements, and size and screening requirements. Only if these waived regulations would still block an electromagnetic signal shall a special exception from height requirements be considered. If a special exception is sought to vary from the height limit, the height of the dish shall be limited to a maximum of twenty feet.

b. Roof-Mounted Antenna(s). The first exception to be considered shall be the center of roof requirement; the second exception shall be from the size and screening requirements, respectively. Only if these waived regulations would still result in a block of the signal shall a special exception from height requirements be considered. A special exception from the height limit shall be allowed up to a maximum of twenty feet above the existing or proposed structure. The approval authority may require the applicant to place the antenna(s) in an area on the roof which takes into consideration view blockage and aesthetics, provided there is a usable signal and structural considerations allow the alternative placement.

C. Amateur Radio Towers – Special Exceptions.

1. Residential Zones. Where a property owner desires to vary from the height, location or setback limitations, the special exception general criteria must be met.

D. Towers – Special Exceptions. Where a property owner desires to vary from applicable criteria, the special exception general criteria must be met.

E. Wireless Communications Facilities – Special Exceptions.

1. Special Use Zone and Residential Zones. An applicant of a proposed wireless facility that exceeds the height limit shall meet the special exception general criteria.
2. Commercial and Industrial Zones. An applicant of a proposed wireless communications facility that exceeds the height limit shall be required to meet the special exception general criteria.

17.70.090 Design and Concealment standards: Small Wireless Facility deployments.

Small wireless facility deployments whether permitted in the right-of way under Chapter Section 15.22 or permitted in accordance with this chapter shall conform to the following design standards:

A. General Requirements.

1. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed underground, 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.
2. No equipment shall be operated so as to produce noise in violation of Chapter 8.
3. Small wireless facilities are not permitted on traffic signal poles.
4. Replacement poles and new poles shall comply with the American with Disabilities Act (ADA), city construction and sidewalk clearance standards, and state and federal regulations in order to provide a clear and safe passage within the rights-of-way.
5. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.
6. The design criteria as applicable to Small wireless facilities described herein shall be considered concealment elements and such Small wireless facilities may only be expanded upon an eligible facilities request, when the modification does not defeat the concealment

elements of the facility.

7. 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, and any such signage on equipment enclosures shall be of the minimum amount possible to achieve the intended purpose; provided that, signs are permitted as concealment element techniques where appropriate.
8. 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.
9. Side arm mounts for antennas or equipment are prohibited.
10. The preferred location of a small wireless facility on a pole is the location with the least visible impact.
11. When requested by the city, the applicant shall install a scaled mock-up version of the facility equipment for temporary viewing purposes to determine the least visual impact upon the city's viewsheds and for visual encroachments that may undermine the historic downtown district character.
12. Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the building or pole upon which they are attached.
13. 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, important viewsheds of Lake Chelan, or detract from the historic character of the downtown district. 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 service provider.
14. When an applicant proposes siting small wireless facilities in the Downtown Planning Area, as described in CMC 17.14.020, small wireless facilities permit applications should include a non-binding recommendation from the HDCA regarding concealment and camouflaged techniques to ensure consideration of preserving the historical intent of the district is upheld. This is recommended as HDCA will be consulted as part of the application review process.
15. The concealment element plan shall include the design of the screening, fencing or other

concealment technology for a tower, pole, or equipment structure, and all related transmission equipment or facilities associated with the proposed small wireless communications facility, including but not limited to fiber and power connections.

- a. The concealment element design should seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including to the extent technically feasible similar height. 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 — or the appearance thereof — 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 or otherwise integrated into the design of the structure. Use of a unified enclosure equal to or less than four (4) cubic feet in volume may be permitted in meeting these criteria.
 - b. If the Director has already approved a concealment element design in a Franchise Agreement, or another wireless communications facility along the same public right-of-way 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.
- B. 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.
- C. Small wireless facilities Attached to Non-Wooden Poles. Small wireless facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right of way or poles outside of the right of way shall conform to the following design criteria:
1. Antennas and the associated equipment enclosures shall be sited and installed in a manner which minimizes the visual impact on the streetscape either by fully concealing the antennae and associated equipment fully within the pole or through a concealment element plan which provides an equivalent or greater impact reduction. This requirement shall be applied in a manner which does not dictate the technology employed by the service provider

nor unreasonably impair the technological performance of the equipment chosen by the service provider.

2. 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.
3. An antenna on top of an existing pole may not extend more than 10% the height of surrounding structures nor shall exceed six (6) feet above the height of the existing pole, whichever is less, unless the provider can provide evidence that the deployment is technically unfeasible at this height allowance. The carrier must deploy the lowest feasible height extension that is technically feasible.
4. The diameter may not exceed sixteen (16) inches, measured at the top of the pole. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted materials to match the pole, and shall be shrouded or screened to blend with the pole; canister antennas shall be required to match color, texture, and/or material of support structure and be designed in a way as to appear as an extension of the pole. 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.
5. 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. In the Downtown Planning Area, applications for new poles should be reviewed and accompanied by a non-binding letter of recommendation by the HDCA as HDCA will be consulted as part of the application review process.
6. 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 for adequate clearance from electrical wires, whichever is greater.
7. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements, ADA requirements, and if a replacement light standard then with the City's lighting requirements.
8. 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.

D. Wooden Pole Design Standards. Small wireless facilities located on wooden poles shall conform to the following design criteria:

1. 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 six 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.
2. 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.
3. Replacement wooden poles may 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.
4. 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.
5. Panel antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.
6. 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.
7. A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection B(1) 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.

8. 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.
9. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles 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.
10. Equipment for small_wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (D)(1). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure 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, if such banners or road signs are allowed by the pole owner.
11. An applicant who desires to enclose its antennas and equipment within a unified enclosure may do so, provided that such unified enclosure does not exceed four (4) cubic feet. 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. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless pole_unless a further distance is technically required and confirmed in writing by the pole owner.
12. 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.

13. 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.

14. 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 conduits shall be minimized to the number technically necessary to accommodate the small wireless facility.

E. Small wireless facilities Attached to Existing Buildings.

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

1. Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
2. Small wireless facilities may not extend more than 10% of the building height and may not be more than 10% of the allowed building height in any zone.
3. Small wireless facilities shall not interrupt existing and prominent architectural lines or horizontal features and details or vertical reveals.
4. 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.
5. Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
6. 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.
7. Small wireless facilities shall be painted and textured to match the adjacent building surfaces.

F. Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.

1. Each strand mounted facility must be less than three (3) cubic feet in volume;
2. Only one strand mounted facility is permitted per cable between any two existing poles;
3. 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 is required by the pole owner for safety clearance;
4. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
5. Grantee may not place an ancillary pole or ground mounted equipment to accommodate such strand mounted facilities, unless in the case of ground mounted equipment placed in pre-existing equipment cabinets; and
6. Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original stand).

G New Poles in the Rights-of-Way for Small wireless facilities and Installations An application for a new pole in the right-of-way is subject to a special development permit and any conditions set forth in the governing Franchise Agreement consistent with CMC 15.22.

1. New poles within the rights-of-way are only permitted if the applicant can establish that:
 - a. The proposed small wireless facility cannot be located on an existing utility pole or light pole, 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;
 - b. The proposed wireless communications facility receives approval for a concealment element plan, as described in subsection 3 below;
 - c. The proposed wireless communications facility also complies with shoreline and SEPA, if applicable; and

G. No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance, except when determined to be exempt pursuant to said ordinance.

1. Even if an alternative location is established pursuant to subsection E(2)(a-c) the Hearing Examiner may determine through the special development permit process that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the particulars of the concealment element design, goals of the City's Comprehensive Plan, and the added benefits to the community.
2. 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 that are higher than the replaced pole, and the overall height of the replacement pole and the proposed wireless communications facility is more than sixty (60) feet.
3. Installation of Small wireless facilities_in a Design District shall be permitted by an administrative approval of a concealment plan utilizing the design and concealment standards contained in this chapter.
4. 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.