

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 01-19

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.200 AND RCW 36.70A.390; AMENDING TITLE 19 OF THE BUCKLEY MUNICIPAL CODE TO ADD A NEW CHAPTER 19.25A AUTHORIZING AND ESTABLISHING PERMITTING REGULATIONS AND AESTHETIC AND DESIGN STANDARDS FOR THE DEPLOYMENT OF SMALL WIRELESS FACILITIES; REVISING SECTION 19.25.030 TO EXEMPT SMALL WIRELESS FACILITIES FROM EXISTING WIRELESS REQUIREMENTS; AMENDING CHAPTER 19.25 TO ADD A NEW SECTION TO ADDRESS ELIGIBLE FACILITY REQUESTS; ADOPTING FINDINGS IN SUPPORT OF THE FOREGOING; REQUIRING A POST-ADOPTION PUBLIC HEARING; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission (FCC) recently adopted a Declaratory Ruling and Third Report and Order (the “FCC Order”), which imposes limitations on the processing and review of all permits associated with the deployment of small wireless facilities; and

WHEREAS, the permitting procedures as well as the aesthetic design and concealment standards that govern deployment of small wireless facilities will become part of Chapter 19.25A;

WHEREAS, separately, federal law and regulation also sets time limits on the processing of applications for eligible facility requests to expand existing structures which do not substantially change the height or profile of the structures used to collocate wireless communications facilities and which regulations will also become part of Chapter 19.25; and

WHEREAS, the FCC Order allows the City to adopt aesthetic standards for deployment of small wireless facilities that will require utilization of a consolidated process emphasizing administrative review in order to comply with federal presumptively reasonable time limits for review; and

WHEREAS, the City Council finds that the existence of federal regulations requires the enactment of administrative procedures and processes which can comply with the FCC Order; and

WHEREAS, the potential conflict between existing City land use review timelines and the preemptive federal shot clocks creates a time sensitive emergency; and

WHEREAS, the City is authorized by state law, including RCW 36.70A.390 and RCW 35A.63.200, to expeditiously adopt interim zoning ordinances for the protection of the public peace, safety, or health while permanent regulations are developed, vetted and processed through the City’s standard legislative procedures; and

WHEREAS, the City Council finds that the use of the interim zoning ordinance will allow the City to meet the requirements of the FCC Order which became effective on January 14, 2019 while providing a meaningful opportunity for its citizens to provide input regarding design, concealment and

other aesthetic standards within the longer timeframe permitted by use of an interim zoning ordinance; and

WHEREAS, the City Council finds that adopting interim zoning regulations as set forth herein for up to six (6) months is necessary for the preservation of the public peace, health or safety;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of this ordinance is to adopt and establish interim permitting and aesthetic requirements and revisions to the City’s wireless communications facilities code provisions in response to the FCC Order for a period of six (6) months, or until such earlier time as permanent regulations may be adopted.

Section 2. Findings. The City Council hereby adopts its findings above and further finds that this ordinance is necessary in order to address potential applications for small wireless facilities in the City within the review periods prescribed by the FCC Order.

Section 3. Amendment to BMC 19.25.030. The Buckley Municipal Code Section 19.25.030 is hereby amended as follows:

The following are exempt from the provisions of the wireless facilities portion of this chapter:

- (1) Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height or dimensions of antennas, towers, or buildings); provided, that compliance with the standards of this chapter is maintained.
- (2) A COW or other temporary personal wireless telecommunications facility shall be permitted during an emergency declared by the city.
- (3) Emergency services’ telecommunication devices.
- (4) Small wireless communications facilities subject to BMC Chapter 19.25A.

Section 4. Amendment to Chapter 19.25 BMC - Adoption of New Section BMC 19.25.170. Chapter 19.25 of the Buckley Municipal Code is hereby amended by the addition of a new section 19.25.170 Eligible Facilities Request and is hereby enacted as follows:

19.25.170 Eligible Facilities Requests

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this Section 19.25.170.

1. “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.
2. “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.
3. “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.
4. “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.
5. “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.
6. “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.

7. “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.

8. “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. The City shall prepare and make publicly available an application form used to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

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

D. Timeframe for Review. Applications for an Eligible Facilities Request are subject to a Type A-1 decision, which application shall be approved within sixty (60) days of the date on which an applicant submits an Eligible Facilities Request application, unless the City determines that the application is not covered by this Section 19.25.170.

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 City and the applicant or in cases where the City 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 City 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 City’s notice of incompleteness.

3. Following a supplemental submission, the City 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 City determines that the applicant’s request does not qualify as an Eligible Facilities Request, the City shall deny the application.

G. **Failure to Act.** In the event the City 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 City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

Section 5. Amendment of Title 19 MMC – Adoption of New Chapter 19.25A. Title 19 of the Buckley Municipal Code is hereby amended by the addition of a new chapter 19.25A Small Wireless Facilities and is hereby enacted as follows:

**Chapter 19.25A
SMALL WIRELESS FACILITIES**

Sections:

19.25A.010	Purpose.
19.25A.020	Definitions.
19.25A.030	General provisions.
19.25A.040	Application requirements for small wireless facilities.
19.25A.050	Review Process.
19.25A.060	Permit Requirements.
19.25A.070	Modifications to Small Wireless Facilities.
19.25A.080	Consolidated Permit.
19.25A.090	Design and concealment standards for small wireless facility deployments.
19.25A.100	New poles in the rights-of-way for small wireless facilities.
19.25A.110	Appeals.

19.25A.010 Purpose.

The purpose of this chapter is to set forth the regulations for the placement, development, permitting, and removal of small wireless facilities. Among the purposes included are to:

H. Minimize potential adverse visual, aesthetic, and safety impacts of small wireless facilities.

- I. Establish objective standards for the placement of small wireless facilities.
- J. Ensure that such standards allow competition and do not unreasonably discriminate among providers of functionally equivalent services.
- K. Encourage the design of such small wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.
- L. Encourage the collocation or attachment of small wireless facilities on existing support structures to help minimize the total number and impact of such structures throughout the community.

19.25A.020 Definitions.

See Chapter BMC 13.35 for additional definitions for terms utilized in this Chapter.

- A. “Antenna” means any exterior 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.
- B. “City” means the City of Buckley, a municipal corporation of the state of Washington in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.
- C. “City property” means any real property owned by City, whether in fee or other ownership estate of interest.
- D. “Collocation” 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.
- E. “Director” means the Planning Director his/her designee.
- F. “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.
- G. “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.
- H. “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.
- I. “Grantor” means the City of Buckley acting through its City council.
- J. “Light Pole” means a pole owned by the City and used primarily for lighting streets, parking areas, parks or pedestrian paths.
- K. “Macro facility” means a large wireless communication facility that provides radio frequency coverage for a cellular 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.

L. “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.

M. “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.

N. “Small wireless” and “small wireless facility” shall have the same meaning as a “small wireless facility” as set forth in 47 CFR 1.6002.

O. “State” means the state of Washington.

P. “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 telecommunications service (whether on its own or comingled with other types of services).

Q. “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 wireline or wireless telecommunications service.

R. “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.

S. “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.

T. “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 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.

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

V. “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.

19.25A.030 General provisions.

A. Small wireless facilities shall not be considered nor regulated as essential public facilities.

B. Small wireless facilities located outside of the public rights-of-way may be either a primary or a secondary use. A different use of an existing structure on the same lot shall not preclude the installation of a small wireless facility.

C. Small wireless facilities located within the public right-of-way pursuant to a valid franchise are outright permitted uses in every zone of the City but still require a small wireless facility permit pursuant to Section 19.25A.040.

19.25A.040 Application requirements for small wireless facilities.

A. Any application for a small wireless facility both inside and outside of the right-of-way shall comply with the following application requirements for a small wireless facility permit described in this section. For small wireless facilities inside the right-of-way, the applicant must also comply with the requirements pursuant to BMC 13.35.

B. Pursuant to Section 19.25A.080, all permits, leases, and right-of-way use authorizations necessary for the deployment of small wireless facilities and, if applicable an application for franchise, shall be consolidated for review and a decision rendered to the full extent feasible with the presumptively reasonable time periods established by 47 CFR 1.6003.

C. 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 of Buckley has adopted this administrative process for the deployment of small wireless facilities. The City and an 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.

D. The Director 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 and related approvals (Parts B and C).

2. Small Wireless Facility 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 19.25A.040(E).

3. Associated Permit(s). Part C of the application shall attach all associated permit requirements such as applications or check lists required under the Critical Areas, Shoreline or SEPA ordinances. Applicants for deployment of small wireless facilities for new poles shall comply with the requirements in Section 19.25A.100.

4. Leases. An applicant who desires to attach a small wireless facility on any City-owned property shall include an application for a lease as a component of its application. Leases for the use of public property, structures or facilities shall be submitted to the City Council for approval.

E. Small Wireless Permit Application. The following information shall be provided by all applications for a small wireless permit.

1. 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, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:

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

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

c. 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.

d. If the site location includes a new replacement light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk within 150 feet of the existing light.

e. Compliance with the aesthetic requirements of BMC 19.25.090.

2. The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. Such written approval shall

include approval of the specific pole, engineering and design standards, 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 the lease agreement between the owner and the applicant is not required.

3. 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.

4. 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:

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

b. Whether the proposed small wireless facility can be screened from residential view by choosing a pole location that is not in front of a window or views.

5. 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 and BMC Chapter 12.04. Further, any application proposing small wireless facilities in Shoreline Management Zones (pursuant to BMC Chapter 19.42) or in Critical Areas (pursuant to BMC Chapter 12.08) must indicate that the application is exempt or comply with the review processes in such codes.

6. 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.

7. 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.

8. 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.

9. Application materials required for a right-of-way use permit as required by BMC 13.35.090(2)(f).

10. 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.

11. 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.

19.25A.050 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 Section 19.25A.040 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 design and concealment standards adopted pursuant to Section 19.25A.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 BMC Chapter 8.30.
6. Small wireless facilities may not encroach onto or over private property or property outside the right of way without the property owner's express written consent.

B. Final Review. Small wireless facility permits on existing structures will be reviewed and approved by the Director. Small wireless deployment on new poles, are subject to review and approval pursuant to Section 19.25A.100.

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 19.25.170 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 USC 253 and 47 USC 332 and other applicable statutes, regulations and case law. Applicants for franchises and the small wireless facility permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers, utilizing supporting infrastructure 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. **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 per BMC 20.01.090. 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.

F. **Withdrawal.** Any applicant may withdraw an application submitted pursuant to Section 19.25A.040 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's decision, then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of City costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Director's decision, there shall be no refund of all or any portion of such fee.

19.25A.060 Permit Requirements

A. The grantee of any permit shall comply with all of the requirements within the small wireless permit.

B. **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.

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

D. **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.

E. **Operational Activity.** The grantee shall commence operation of the small wireless facility no later than three (3) months after installation.

19.25A.070 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 consistent with 13.35 BMC.

19.25A.080 Consolidated Permit

A. 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 development services department. 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.

B. To the extent they do not conflict with the requirements of this chapter, the general standards applicable to the use of the rights-of-way described in BMC 13.35 shall apply to all small wireless facility permits.

19.25A.090 Design and concealment standards for small wireless facility deployments.

Small wireless facility deployments permitted inside or outside the right-of way shall conform to the following design standards:

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

1. Enclosure Location and Dimensions. The applicant shall minimize to the extent possible the antenna and equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment. The antennas and equipment shall be located using the following methods in priority order:

a. Concealed completely within the pole or pole base. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design. If within the pole base, the base shall meet the ADA requirements and not impact the pedestrian access route.

b. Located on a pole. If located on a pole, antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning no more than six (6) inches off of the pole, and the equipment enclosure and all other wireless equipment associated with the small wireless facility shall be the minimum size necessary for the intended purpose. The equipment enclosure and all other wireless equipment associated with the pole (including interior conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. If the equipment

enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs. The furthest point of any antenna or equipment enclosure may not extend more than twenty-four (24) inches from the face of the pole.

c. Underground in a utility vault. If located underground, the access lid to the equipment enclosure shall be located outside the footprint of any pedestrian curb ramp and shall have a nonskid surface meeting ADA requirement if located within an existing pedestrian access route.

d. On private property. If located on private property, the applicant shall submit a copy of an executed easement or lease agreement with the private property owner prior to the right-of-way permit issuance.

2. The furthest point of any antenna or equipment enclosure may not extend more than twenty-four (24) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.

3. All conduit, cables, wires and fiber must be routed internally in the non-wooden 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.

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

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.

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; provided that the height of the replacement pole cannot be extended further by additional antenna height.

7. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25% increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection E(4) below.

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.

B. 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 ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.
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 must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.
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. 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. The furthest point of any antenna or equipment enclosure may not extend more than twenty-four (24) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.
9. 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.

10. 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.

11. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (E)(1). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

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

13. 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.

14. 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.

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

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

C. 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. The interruption of architectural lines or horizontal or vertical reveals is discouraged.

3. 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.
4. Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
5. 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.
6. Small wireless facilities shall be painted and textured to match the adjacent building surfaces.

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

1. Each strand mounted facility shall not exceed 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 technically necessary or 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. Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and
6. Pole mounted equipment shall comply with the requirements of subsections A and B above.
7. Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).
8. Strand mounted facilities are prohibited on non-wooden poles.

E. General requirements.

1. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed under ground or the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.
2. No equipment shall be operated so as to produce noise in violation of BMC 8.30.
3. Small wireless facilities are not permitted on traffic signal poles.
4. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal

laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.

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

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

7. 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.

8. Side arm mounts for antennas or equipment must be the minimum extension necessary and may not create a gap of more than twelve (12) inches for wooden poles and no more than six (6) inches for non-wooden poles between the pole and the antennas or equipment.

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

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

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

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

13. 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.

19.25A.100 New poles in the rights-of-way for small wireless facilities.

A. New poles within the rights-of-way are only permitted if the applicant can establish that:

1. 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;

2. The proposed small wireless facility complies with the applicable requirements of Section 19.25A.090(G).
3. The proposed small wireless facility receives approval for a concealment element design, as described in subsection C below;
4. The proposed small wireless facility also complies with Shoreline Management Act, and SEPA, if applicable; and
5. No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance (Chapter 12.08 BMC), except when determined to be exempt pursuant to said ordinance.

B. An application for a new pole is subject to a Type C-2 decision by the hearing examiner.

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

1. The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including similar height to the extent technically feasible. Any concealment element design for a small wireless facility on a decorative pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the decorative pole. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color, and texture - 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. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to Section 19.25A.090.

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

D. Even if an alternative location is established pursuant to Section 19.25A.100(A)(1) the Director may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.

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

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

19.25A.110 Appeals

Small wireless facilities permit decisions for applications located outside of the rights of way, made by the Director, are final decisions appealable to the Hearing Examiner within thirty (30) days of such decision. However, a decision on a request for new poles for the siting of small wireless facilities, as outlined in Section 19.25A.100, are determined by the Hearing Examiner at a public hearing. Such decisions on new poles are final and appealable to Pierce County Superior Court within thirty (30) days of such decision. The timely filing of an appeal of a small wireless facility permit decision shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

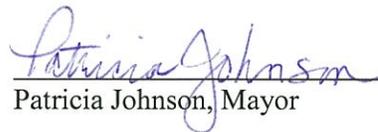
Section 6. Public Hearing. The City Clerk is hereby authorized and directed to schedule a public hearing on the interim regulations set forth in this ordinance and to provide notice of said hearing in accordance with applicable standards and procedures. Said hearing shall be held no later than 60 days after the date of adoption hereof. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council may adopt additional legislative findings in support of this ordinance at the conclusion of said hearing.

Section 7. Corrections. The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 8. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 9. Effective Date. This ordinance shall be in full force and effective five (5) days from the passage and published in accordance with law.

Introduced, passed, and approved this 22nd day of January 2019.


Patricia Johnson, Mayor

ATTEST:

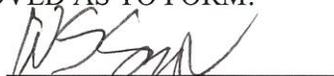
By:


Treva Percival, City Clerk

PUBLISHED: January 30, 2019
EFFECTIVE: February 4, 2019

APPROVED AS TO FORM:

By:


Scott Snyder, City Attorney