CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 11-19

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, CONCERNING THE BUCKLEY MUNICIPAL CODE AND REGULATING TELECOMMUNICATION FACILITIES; AMENDING BMC CHAPTER 13.35, CHAPTER 19.12, SECTION 1.01.060, SECTION 19.25.030, AND SECTION 20.01.030 TABLE 2; ADDING NEW CHAPTER 19.25A AND SECTION 19.25.170; TO REGULATE INSTALLATION OF SMALL CELL TELECOMMUNICATION DEVICES IN CITY RIGHTS-OF-WAY; 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 City Council of the City of Buckley adopted interim zoning regulations on January 22, 2019, under Ordinance 01-19; and

WHEREAS, the "60-day notice" expedited review was received April 4, 2019, by the Washington State Department of Commerce of the proposed change in development regulations under Submittal ID #2019-S-34; and

WHEREAS, a determination of non-significance was issued April 10, 2019, in accordance with the State Environmental Policy Act; and

WHEREAS, the Washington State Department of Commerce granted expedited review for the proposed change in development regulations under Submittal ID Number 2019-S-34 on April 18, 2019; and

WHEREAS, the planning commission conducted a public hearing on this proposal on May 20, 2019; and

WHEREAS, the planning commission heard no comments and recommends approval of this proposed telecommunications ordinance;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment to BMC 1.01.060. The following terms shall be added:

1.01.060 Definitions.

The following words and phrases whenever used in the municipal code or ordinances of the city shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

(1) "City" or "town" means the city of Buckley, Washington, or the area within the territorial limits of the city of Buckley, Washington, and such territory outside of the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provisions;

(xx) "City administrator" means the individual or his/her designated representative appointed by the mayor to oversee day-to-day operations of the city.

(xx) "City engineer" means the engineer appointed as such by the city or his/her designated representative.

(xx) "City inspector" means the employee or agent designated by the city to inspect permitted work.

(xx) "City property" means any real property owned by City, whether in fee or other ownership estate of interest.

(xx) ~~(2)~~ "Council" means the city council of the city of Buckley, Washington. "All its members" or "all council members" means the total number of council members provided by the general laws of the state of Washington;

(xx)~~(3)~~ "County" means the county of Pierce;

(xx) "Day" means a calendar day unless otherwise stated in ordinance;

(xx) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or **person**s located within the city including, but not limited to, damage to **person**s, property, or environment from natural or manmade consequences, such as storms, earthquakes, riots or wars.

(xx) "Hearing examiner" means the city of Buckley hearing examiner as established in BMC 2.35.

(xx)~~(5)~~ "Law" denotes ~~applicable federal law,~~ the federal and state c~~C~~onstitutions ~~and~~ rules and regulations;~~statutes of the state of Washington~~, the ordinances of the city of Buckley, Washington; and any conditions or other requirements imposed by any permit, license or approval of a government agency~~, and, when appropriate, any and all rules and regulations which may be promulgated thereunder~~;

(xx)~~(6)~~ "May" means the action is acceptable, provided it conforms to the provisions of this code;

(xx)~~(7)~~ "Must" and "shall" each mean a mandate; the action must be done;
(xx)~~(8)~~ "Oath" includes affirmation;
~~(10)~~ (xx) "Ordinance" means a law of the city; provided, that a temporary or special law, administrative action, order or directive may be in the form of a resolution;
(xx) Permit" means a document issued by the city granting permission to engage in an activity not allowed without a permit.
(xx) "Permit center" means the city building and planning office
(xx)~~(11)~~ "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local government unit however designated, association, club, company, corporation, business, trust, or the manager, lessee, agent, servant, officer or employee of any of them;
(xx)~~(12)~~ "State" means the state of Washington;
(xx) "Stop work order" means an oral directive or a written notice posted at the site of activity that requires all work to be stopped until the city approves continuation of work.
(xx) ~~13)~~ "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this city which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state;
(xx) ~~(14)~~ "Written" includes ~~printed, typewritten, mimeographed or multigraphed.~~ handwriting, typewriting, emailing, printing, photostating, and photographing and does not include forms of communication that are not likely to be retained for any significant period of time by the city.

Section 2. Repeal and replace BMC 13.35.040, Definitions. The Buckley Municipal Code Section 13.35.040, Definitions is hereby replaced in its entirety as follows:

13.35.040 Definitions.

In addition to the terms defined in BMC 1.01.060, the following words and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(1) "Applicant" means any person or corporation submitting an application for a franchise.

() ~~"City property" means any real property owned by City, whether in fee or other ownership estate of interest.~~

(2) "Civil violation" or "violation" means an act or omission contrary to a regulation as defined in Chapter 1.12 BMC. A violation continues to exist until abated and each day, or a portion thereof, that a violation exists constitutes a separate and distinct offense.

(3) "Complaint" means a written document initiating a procedure pursuant to Chapter 1.12 BMC.

(4) "Cost of construction" means the cost incurred for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), in accordance with all applicable laws, ordinances and standards, including the city's public works standards. The cost of construction shall be documented in writing on final invoices or other documents showing the amounts paid by the applicant. The city will not accept written estimates in determining the cost of construction. In the event of a disagreement between the city and the applicant concerning the cost of the improvements and/or infrastructure, the city engineer's determination shall be final.

(5) "Department" means the public works and utilities department or other department designated by the mayor.

(6) "Director" means the director of public works or his/her designated representative as appointed by the mayor.

(7) "Enforcement officer" means the city's code enforcement officer(s) or any other person or persons assigned or directed by the city administrator, or his or her designee, to enforce the regulations subject to the provisions of this chapter.
(8) "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.
(9) "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.
(10) "Franchised utilities" means utilities that have city approval to use city rights-of-way for the purpose of providing their services within or beyond the city, whether by written franchise granted by the city, state tariff or other similar city authorization.
(11) "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.
(12) "Grantor" means the City of Buckley acting through its City council.
(13) "Investigative" means the gathering of information about the proposed location of utilities, right-of-way, subsoil or subgrade conditions, etc., to assist in identifying ascertaining surface and subsurface conditions within a project area.
(14) "Light Pole" means a pole owned by the City and used primarily for lighting streets, parking areas, parks or pedestrian paths.
(15) "Minor repair or construction" means any activity which, in the discretion of the city engineer, includes a short-term temporary use of the right-of-way and where pavement or sidewalk is not to be disturbed or broken. Examples of such activities include, but are not limited to, the sweeping and/or cleaning of debris from the right-of-way and trimming, cutting and pruning vegetation within the right-of-way, placement or replacement of gravel on parking shoulders that were previously used for on street parking.
(16) "Notice of violation" means a document mailed to a permittee or unauthorized user and posted at the site of a nonconforming or unsafe condition.
(17) "Oral directive" means a directive given orally by city personnel designated by the director to correct or discontinue a specific condition.
(18) "Permittee" means the person, partnership, group, organization, company, or corporation so designated on the permit application, or designee.
(19) "Policy" means a policy adopted by the director to implement this chapter, or to carry out other responsibilities as may be required by this chapter or by other codes, ordinances, or resolutions of the city or other agencies.
(20) "Private use" means use of the public right-of-way for the benefit of a person.
(21) "Revocation" means the cancellation of a permit.
(22) (a) "Right-of-way" means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, trails, sidewalks, bikeways, parking, and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto.
(b) For use in small cell facilities, "public right-of-way" or "right-of-way" shall be as defined in BMC 19.25A.020.
(23) "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.

(24) "Small wireless" and "small wireless facility" shall have the same meaning as a "small wireless facility" as set forth in 47 CFR 1.6002.
(25) "Stop work order" means an oral directive or a written notice posted at the site of activity that requires all work to be stopped until the city approves continuation of work.
(26) "Structure" means a pole, tower, base station, or other building, whether on its own or comingled with other types of services, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service.
(27) "Suspension" means the temporary stay of a permit.
(28) "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.
(29) "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.
(30) "Temporary" as used in this chapter shall mean of a limited duration generally considered not to exceed three days after an event or a total duration of 14 days unless otherwise stated in this chapter or extended by exception.
(31) "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.
(32) "Underground location service" means the underground utilities location center that will locate all underground utilities prior to an excavation.
(33) "Unsafe condition" means any condition which the director determines is a hazard to health, or endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or which may cause damage thereto.
(34) "Wireline" means services provided using a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

Section 3. Amendment to BMC 19.12 Definitions, the following terms shall be added or amended:

19.12.050 Antenna.
"Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet, or television communication through the sending and/or receiving 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.~~of electromagnetic waves. This includes equipment attached to a tower or building for the purpose of providing personal wireless services.~~

19.12.xxx "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.

19.12.xxx "Director" means the Planning Director or his/her designee.

19.12.220 FCC.
"FCC" or "Federal Communications Commission" shall be as defined in BMC 13.35.040.

19.12.450 Public utility.
"Public utility" means a private business organization such as any public service corporation, including physical plan facilities, ~~public service or private corporation~~ performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Said services shall include, but are not limited to, water supply, electric power, telephone, gas and transportation for persons and freight.

Section 4. Amendment to BMC 19.25.030. The Buckley Municipal Code Section 19.25.030 is hereby amended as follows:

19.25.030 Exemptions from wireless facilities requirements.
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 5. A new section 19.25.170 is added to Chapter 19.25 BMC to read as follows:

19.25.170 Eligible facilities requests.
(1) Definitions. The following special terms shall be used in this section:
(a) "Base Station" is the structure or equipment that is 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 or any equipment associated with a tower. The Base Station includes, without limitation:
(i) Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
(ii) 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).
(iii) 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.
(b) "Eligible Facilities Request" means a 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:
(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or
(iii)Replacement of transmission equipment.

(c) An "Eligible support structure" is 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. The terms tower, eligible support station, and base station do not include any structure that, at the time the Eligible Facilities Request application is filed with the City, do not support or house equipment described in subparagraph 19.25.170 (3)(d)(a)(i) and (3)(d)(a)(ii) below.

(d) "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.

(e) "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.

(2) The director shall provide application forms for eligible facility requests.

(a) The application may not require the applicant to demonstrate a need or business case for the proposed modification.

(3) To be approved, the request must meet all of the following criteria:

(a) The definition of "base station."

(b) The mounting or installation of transmission equipment is on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes. An "Eligible support structure" is 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.

(c) On existing towers or base stations. The structure or equipment is to be located on existing, constructed towers or base stations; however, towers or base stations that are 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 considered existing for purposes of this definition.

(d) The Eligible Facilities Request shall not cause substantial change to the physical dimensions of an eligible support structure, including any of the following:

(i) 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;

(ii) 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;

(iii) 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;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements, as expressed in 19.25A.090, of the eligible support structure; or

(vi) 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.

(4) The request shall be processed as a Type A-1 permit, as modified herein.

(5) A decision shall be rendered within 60 days from the date of receipt.

(a) The application review shot clock begins upon receipt of application.

(b) The city shall review the request and determine whether it is covered under this section.

(c) The city shall within 30 days of receipt clearly and specifically delineate all missing documents or required information specified in the application.

(d) The application review shot clock shall resume upon submittal of supplemental information.

(e) The city shall within 10 days of the supplemental submission inform the applicant whether material is still missing.

(i) The shot clock is paused in the case of a second or subsequent notice of incompleteness.

(ii) Second or subsequent notices of incompleteness shall not specify missing documents or information that was not identified in the first notice.

(f) If the city fails to decide on the eligible facilities request within 60 days, the request is deemed granted.

(i) The deemed grant shall not be effective until the applicant notifies the city in writing after the review period expires (accounting for any tolling) that the application is deemed granted.

(6) If the city determines that the applicant's request does not qualify as an Eligible Facilities Request, the city shall deny the application.

Section 6. A new chapter BMC 19.25A is added to the Buckley Municipal Code to read as follows:

19.25A.010 Purpose.

The purpose of this chapter is to regulate placement, development, permitting, and removal of small wireless facilities and accomplish the following:

(1) Minimize adverse visual, aesthetic, and safety impacts of small wireless facilities.

(2) Establish objective standards for the placement of small wireless facilities.

(3) Ensure that standards allow competition and do not unreasonably discriminate among providers of functionally equivalent services.

(4) Encourage the design of such small wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.

(5) Encourage the collocation or attachment of small wireless facilities on existing support structures and reduce the total number and impact of such structures throughout the community.
(6) Manage the city rights-of-way in a manner that balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the city.
(7) Reduce challenges faced by the city and applicants by coordinating applicable legislative and administrative processes under the Federal Communications Commission (FCC) regulations.

19.25A.020 Definitions.
In addition to the terms defined in BMC 1.01.060, 19.12, and 13.35.040, the following words and phrases used in this chapter shall have the following meanings unless the context clearly indicates otherwise:
(x) "City property" shall be as defined in BMC 1.01.060.
(x) "Franchise" or "franchise agreement" shall be as defined in BMC 13.35.040.
(x) "Grantee" shall be as defined in BMC 13.35.040.
(x) "Grantor" shall be as defined in BMC 13.35.040.
(x) "Light Pole" shall be as defined in BMC 13.35.040.
(x) "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.
(x) "Public right-of-way" or "right-of-way" means land acquired or dedicated for public roads and streets but does not include:
  (a) State highways;
  (b) Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;
  (c) Structures, including poles and conduits, located within the right-of-way;
  (d) Federally granted trust lands or forest board trust lands;
  (e) Lands owned or managed by the state parks and recreation commission; or 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.
(x) "Service provider" shall be as defined in BMC 13.35.040. Service provider also shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.
(x) "Small wireless" and "small wireless facility" shall be as defined in BMC 13.35.040.
(x) "Structure" shall be as defined in BMC 13.35.040.
(x) "Telecommunications facilities" " shall be as defined in BMC 13.35.040.
(x) "Telecommunications service" shall be as defined in BMC 13.35.040.
(x) "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.

(x) "Traffic Signal Poles" " shall be as defined in BMC 13.35.040.
(x) "Unified enclosure" means a small wireless facility providing concealment of antennas and equipment within a single enclosure.
(x) "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.
(1) Small wireless facilities shall not be considered or regulated as essential public facilities.
(2) Small wireless facilities located outside public right-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.
(3) 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 and require a small wireless facility permit pursuant to Section 19.25A.040.

19.25A.040 Process.
Reviews may be for facilities in the right-of-way and facilities not in the right-of-way. Both types of facilities shall meet the following submittal requirements unless specifically noted.
(1) Small wireless permit process is Type A-1.
(2) For small wireless facilities inside the right-of-way, the applicant must also comply with the requirements pursuant to BMC 13.35.
(3) 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.
    (a) Consolidation is required for review and decisions rendered to the full extent feasible with the presumptively reasonable time periods established by 47 CFR 1.6003.
    (b) Included in consolidation are all permits, permissions, leases, and right-of-way use authorizations necessary for the deployment of small wireless facilities and, if applicable an application for franchise pursuant.
    (c) If the applicant requires a new franchise to use the right-of-way, the franchise approval may be consolidated with the small wireless facility permit review if requested by the applicant.
    (d) 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.
    (e) 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.
(4) 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.
    (a) Part A is the complete application for a franchise agreement. A franchise agreement is required if any part of the facilities is to be in the public right-of-way.
        (i) An applicant with an existing franchise for 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).

(b) 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.

(c) Part C of the application shall contain attachments of all associated permit requirements such as applications or check lists required under the Critical Areas, Shoreline or SEPA ordinances.

(i) Applicants for deployment of small wireless facilities for new poles shall comply with the requirements in Section 19.25A.100.

(d) Part D is for lease applications, which is required for attaching a small wireless facility on any City-owned property. This lease application shall be a component of the application.

(i) Leases for the use of public property, structures or facilities shall be submitted to the City Council for approval.

(5) The following information shall be provided by all applications 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 use 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:

(i) 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;

(ii) 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.

(iii) All existing or 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.

(iv) 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.

(v) Compliance with the aesthetic requirements of BMC 19.25.100, Design criteria.

(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.

(c) The applicant may batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in contiguous service areas.

(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:

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

(ii) 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 a view.

(e) Any application for a small wireless permit that contains an element that is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 12.04 BMC. Further, any application proposing small wireless facilities in Shoreline Management Zones (pursuant to BMC Chapter19.42) 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.

(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 that generate RF radiation necessary to the Small Wireless facility are to be provided by a third party, then the small wireless permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.

(g) The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or use 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) Application materials required for a right-of-way use permit as required by BMC 13.35.090(2)(f).

(j) 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.

(k) 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 and conditions of approval.

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 (7) 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-way.

(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.
   (a) 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 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.

(7) A right-of-way permit is needed showing traffic control work location and for any work required by 13.35.

(8) Small wireless deployment on new poles, are subject to review and approval pursuant to Section 19.25A.100.

(9) The design approved in a small wireless facility permit shall be considered concealment elements, as expressed in 19.25A.090, and may only be expanded upon in an Eligible Facilities Request described in Section 19.25.170 when the modification does not defeat the concealment elements of the small wireless facility.

(10) 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, using supporting infrastructure that is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this Chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

(11) 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 Title 20 BMC.
   (a) The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries.
   (b) The applicant is encouraged to host informational meetings for the public regarding the deployment.
   (c) 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.

(12) 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.
   (a) When a withdrawal is received, the application shall be deemed null and void.
   (b) 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 and time requirements.

(1) The grantee of any permit shall comply with all of the requirements within the small wireless permit.
(2) 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 shall provide site photographs.
(3) 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.
(4) The grantee must maintain the small wireless facilities in safe and working condition.
   (a) 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.
(5) 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.

(1) The grantee shall apply for a small wireless facility permit if a modification to an existing small wireless facility is desired, 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, as expressed in 19.25A.090.
(2) 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.
   (a) 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.
   (b) Right-of-way use permits may be required for routine maintenance, repair or replacement consistent with 13.35 BMC.

19.25A.080 Consolidated Permit.

(1) The issuance of a small wireless permit grants authority to construct small wireless facilities in the rights-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both the public works and the development services department.
   (a) An application for a franchise to deploy small wireless facilities shall be processed in parallel and consideration coordinated with the process outlined in this chapter in order to comply with the presumptively reasonable review periods established by FCC regulation.
   (b) 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 The city shall make every effort to act on the consolidated permits within the presumptively reasonable time periods established by FCC Order.
(2) 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. These design standards serve as Concealment Elements for the purposes of an Eligible Facilities Request.

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

(a) 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:

(b) 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.

(c) 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.

(d) 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.

(e) On private property. If located on private property, the applicant shall submit a copy of an executed permission document with the private property owner prior to the right-of-way permit issuance.

(f) 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.

(g) 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.

(h) 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 that 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.

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

(j) 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.

(k) 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 percent increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection (5)(d) below.

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

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

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

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

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

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

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

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

(g) A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection (2)(a) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant

may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.

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

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

(j) All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit that 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.

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

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

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

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

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

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

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

(3) Small wireless facilities attached to existing buildings, shall conform to the following design criteria:
   (a) Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
   (b) The interruption of architectural lines or horizontal or vertical reveals is discouraged.
   (c) New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.
   (d) Small wireless facilities shall use the smallest mounting brackets necessary in order to provide the smallest offset from the building.
   (e) Skirts or shrouds shall be used on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
   (f) Small wireless facilities shall be painted and textured to match the adjacent building surfaces.

(4) Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.
   (a) Each strand mounted facility shall not exceed three (3) cubic feet in volume;
   (b) Only one strand mounted facility is permitted per cable between any two existing poles;
   (c) The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance technically necessary or is required by the pole owner for safety clearance;
   (d) No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
   (e) Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and
   (f) Pole mounted equipment shall comply with the requirements of subsections (1) and (2) above.
   (g) Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).
   (h) Strand mounted facilities are prohibited on non-wooden poles.

(5) General requirements.
   (a) Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed under ground or the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.
   (b) No equipment shall produce noise in violation of BMC 8.30.
   (c) Small wireless facilities are not permitted on traffic signal poles.
   (d) Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.
   (e) Failure to bring a permitted wireless facility on line and into operation within three (3) months of completion of construction shall be deemed an abandonment of the facility and

the permit shall expire. The applicant shall remove all facilities within thirty (30) days of written notice from the city. In addition to any other remedy which the city may have, the facility may be removed by the city or its contractor and the owner billed for the actual costs of removal.

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

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

(h) Side arm mounts for antennas or equipment must be the minimum extension necessary and 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.

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

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

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

(l) The City may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way 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.

(m) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner that 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 that 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.

(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 small wireless facility complies with the applicable requirements of Section 19.25A.090.

(c) The proposed small wireless facility receives approval for a concealment element design, as described in subsection (3) below;

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

(e) 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.

(2) 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.

(a) 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, using 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 use 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.

(3) 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 use 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.

(4) Even if an alternative location is established pursuant to Section 19.25A.100(1)(A) 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.

(a) 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.

(5) 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 that 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 that provide similar or greater protections of the street scape.

19.25A.110 Appeals

Administrative approval or denial of small wireless permits is final. An appeal from any permit approval or denial under this chapter may be taken only to superior court.

Section 7. Amendment. Section 20.01.030 Table 2 Application Type is amended to add the following permits:

Title and Chapter	Permit	Permit Type					
		A-1	A-2	A-3	C-1	C-2	C-3

19.25.170	[b] Telecommunication – Eligible facilities requests	A-1					
19.25A	[b] Telecommunication – Small cell facilities;	A-1					

[b] Telecommunication facilities shall follow the shot clocks (time requirements) required by the FCC.

Section 8. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City Administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

Section 9. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 10. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

Introduced, passed and approved this 11th day of June 2019

Pat Johnson, Mayor

ATTEST:

Treva Percival, MMC – City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

PUBLISHED: June 19, 2019
EFFECTIVE: June 24, 2019