PLEASE NOTE THIS MEETING BEGINS AT 3 PM

ANACORTES PLANNING COMMISSION

THURSDAY, JANUARY 3, 2019

Municipal Building Council Chambers

6th Street and "Q" Avenue

AGENDA

3 P.M.

VIEW PACKET MATERIALS HERE

1. **Roll Call**

2. **New Business**
   Public Meeting: Stakeholder and Planning Commission Opening Discussion of Wireless Telecommunications Draft Regulations

The City of Anacortes encourages people with disabilities to participate in public meetings. For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.

Planning Commission Agenda Bill

Meeting Date: 1/3/2019 **Agenda Item**: Special Public Meeting

Subject: Wireless Code Updates

Staff Contact: Darcy Swetnam, Don Measamer

Summary Statement: Staff recommends consideration of the attached two new chapters of the Anacortes Municipal Code, updating the City's regulation of wireless facilities and master permits in City rights-of-way.

Background: Council adopted Ordinance 3010 on August 28, 2017, which placed a moratorium on new applications for telecommunications facilities and franchise agreements within the City rights-of-way for telecommunication purposes to allow time to rewrite these sections of the Anacortes Municipal Code. The initial six-month moratorium was extended for an additional six months on February 20, 2018, per Ordinance 3020. The moratorium will expire on February 28, 2019. Staff have worked with outside counsel to ensure the proposed draft complies with federal and state law and anticipates applications for small cell deployment in City rights-of-way.

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: No motion at this time – discussion item only.

Alternative Actions: N/A

Attachments (listed in order presented): Proposed drafts.

Chapter 19.68

WIRELESS SERVICE FACILITIES

Sections:
19.68.010 Purpose.
19.68.020 Applicability.
19.68.030 Definitions.
19.68.040 Permit required.
19.68.050 Substantial Modification.
19.68.060 Non-Substantial Modification.
19.68.070 Non-Substantial Modification application.
19.68.080 Permit application.
19.68.090 Permit approval process
19.68.100 Permit review – general criteria.
19.68.120 Permit review – additional criteria for conditional uses.
19.68.130 Completeness Review.
19.68.140 Construction.
19.68.150 Appeals
19.68.160 Prohibited locations
19.68.170 Permitted locations.
19.68.180 Visibility and performance Standards
19.68.190 Colocation standards
19.68.200 Requirements for non-Substantial Modifications.
19.68.210 Maintenance of facilities.
19.68.220 Testing of facilities required – Radio-frequency (RF) emissions.
19.68.230 Testing of facilities required – Noise emissions.
19.68.240 Security fencing.
19.68.250 Abandonment of facilities.
19.68.260 Signs.
19.68.270 Lighting standards.
19.68.280 SEPA.

19.68.010 Purpose.

The purposes of this chapter are as follows:

(1) Establish development regulations consistent with the City's Comprehensive Plan;

(2) Protect property values and promote tourism through protection of scenic vistas of the mountains, tree-covered hillsides, the waterfront, and tourist-related zones and areas;

(3) Facilitate the use of public property and structures for wireless service facilities to reduce the impact of such facilities upon residential and other property;

(4) Maintain the quality of life associated with the aesthetic character of the City's surroundings;

(5) Provide adequate sites for locating wireless service facilities in areas where the adverse impact on the community is minimal;

(6) Provide facilities and infrastructure to provide wireless communications service to City residents, businesses, and others when in Anacortes;

(7) Encourage optimal colocation and sharing of new and existing facilities, and minimize the total number of towers throughout the community;

(8) Encourage use of most appropriate technology and prompt removal of outdated or abandoned wireless service facilities;

(9) Encourage the location of wireless service facilities upon stealth and alternative support structures;

(10) Require that the design of wireless service facilities incorporate camouflage, disguise, screening and concealment technology so that such facilities blend into their surroundings;

(11) Avoid the potential damage to adjacent properties from tower failure by engineering and careful siting of tower structure;

(12) Enhance the ability of the providers of wireless services to provide such services to the community quickly, effectively, and efficiently; and

(13) Provide a level, nondiscriminatory competitive environment and thereby encouraging increased competition among providers of functionally equivalent wireless services.

19.68.020 Applicability.

Except as otherwise provided herein, the placement of any wireless service facility at any location within the City is subject to the provisions of this chapter. The standards and process requirements of this chapter supersede all other review process and approval criteria, setback, height or landscaping requirements of this title. Except as provided herein, all wireless telecommunication service facilities must comply with the provisions of this chapter.

19.68.030. Definitions.

(1) “Antenna” means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

(2) “Base station” means: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a “Tower” or any equipment associated with a Tower.

(A) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(B) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(C) The term includes any structure other than a tower that supports or houses equipment 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 such support.

(D) The term does not include any structure that does not support or house equipment for wireless telecommunications services.

(3) “Camouflage” means a palette of techniques used to disguise, hide and conceal a wireless service facility from public view by blending its appearance into elements of the visual background. The term connotes the use of paint, landscaping, building materials and artificial screens in patterns that merge with the elements in the background environment.

(4) “Colocation” means the placement or installation of wireless facilities on existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement, or modification of wireless facilities within an approved equipment compound.

(5) “Director” means the Director of Planning, Community, and Economic Development.

(6) “Electrical transmission tower” means a structure that physically supports high voltage overhead power lines. The term does not include a utility pole.

(7) “Equipment Cabinet” means an enclosure that is mounted above base flood elevation or placed on a concrete slab that contains a Permittee's improvements, personal property, and facilities to operate its wireless services including: radio receivers, transmitters, related facilities, and/or related cables and utility lines, location-based power sources, the electrical meter and any other necessary equipment.

(8) “Equipment Shelter” means an enclosed structure, shed or box at the base of a mount to store a Permittee’s improvements, personal property, and facilities to operate its wireless services including: radio receivers, transmitters, related facilities, and/or cabinets, related cables and utility lines, location-based power sources, the electrical meter and any other necessary equipment.

(9) “Existing.” Any tower or base station is existing for purposes of this chapter 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 permitted when it was built, but was lawfully constructed, is existing for purposes of this chapter.

(10) “Facilities” means all of the towers, equipment, fixtures, antennas, equipment cabinets, equipment shelters, and other appurtenances necessary to furnish and deliver wireless services, including but not limited to utility, monopoles, and street poles with cross arms or without cross arms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of wireless services. Facilities include “Small Wireless Facilities” as defined below.

(11) “FCC” or “Federal Communications Commission” means the federal agency, or its lawful successor, authorized to regulate and oversee wireless telecommunications carriers, services and providers.

(12) “Lattice tower” means a type of mount that is self-supporting with multiple legs and cross bracing of structural steel.

(13) “Monopole” means a type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform or racks for panel antennas arrayed at the top.

(14) “Public street” means any highway, street, road, alley or other public way for motor vehicle travel within the city and under the jurisdiction and control of the city which has been acquired, established, dedicated or devoted to street purposes.

(15) “Right(s)-of-way” means all public streets and associated 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, sidewalks, bikeways and horse trails, whether improved or unimproved, including any air rights, subsurface rights or easements related thereto.

(16) “Service provider” means every corporation, company, association, joint stock association, firm, partnership, person, city, town, or other legal entity owning, operating, or managing any facilities used to provide and providing wireless telecommunications services for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city, town, or other legal entity.

(17) “Site” means the current boundaries of the leased or owned property surrounding the facility and any access or utility easements currently related to the site, and for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(18) “Small Wireless Facility” encompasses facilities that meet the following conditions:

(A) The facilities—

(1) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
(2) are mounted on structures no more than 10 percent taller than other adjacent structures, or
(3) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(B) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

(C) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(D) The facilities do not require antenna structure registration under 47 CFR § 17.4;

(E) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(F) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

(19) “Street pole” means a City-owned pole including electrical distribution poles and other poles owned or installed by the City, but excluding facilities for electrical transmission purposes, located in the public right-of-way.

(20) “Stealth” or “stealthing” means designing facilities to be architecturally incorporated into the surrounding community’s environs while minimizing aesthetic impacts. Examples of stealthing include, but are not limited to, steeples, windmills, water towers, flag poles, light poles, or chimneys.

(21) “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(22) “Transmission equipment” means equipment that disseminates information by wire, radio, optic cable, electromagnetic, or similar means for any FCC-licensed or authorized wireless telecommunication 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 telecommunications 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.

(23) “Wireless telecommunications service” or “wireless service” means the transmission of information by wire, radio, optic cable, electromagnetic, or 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, wireless telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals and excludes “cable services,” “cable communications systems” and “CATV systems” as defined in Chapter 5.44.

(24) “Tower” means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

(25) “Utility pole” means a pole privately owned or installed by a utility company for the purpose of electrical transmission, located outside of the public right-of-way.

(26) “Wireless support structure” or “support structure” means a freestanding structure, such as a monopole, utility pole, street pole, tower, either guyed or self-supporting, base station, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. Any device (attachment device) used to attach a wireless facility to an existing structure or building (attachment structure) shall be excluded from the definition of and regulations applicable to support structures.

19.68.040 Permit required.

(A) New Facilities. A wireless service facility (WSF) permit or conditional wireless use permit (WCUP) is required prior to the site preparation, construction, or installation of any new wireless service facility. The permit required in each zone is specified in AMC 19.68.

(B) Colocating Facilities. A wireless service facility (WSF) permit is required in every zone prior to the colocation of any wireless service facility and is required for colocations that qualify as Substantial Modifications. Colocations involving modifications under subsection (3) below are exempt from this requirement.

(C) Non-Substantial Modifications. Modifications to existing facilities that involve addition, removal, and/or replacement of transmission equipment that are Non-Substantial Modifications as defined in 19.68.060 are subject to the application requirements in 19.68.070. A WSF or CUP will not be required for these types of modifications.

(D) Substantial Modifications. Modifications to existing facilities that involve the addition, removal, and/or replacement of transmission equipment that are Substantial Modifications as defined in 19.68.050 are subject to the requirements for new facilities or colocations as applicable.

(E) No wireless service facility permit may be issued under this chapter unless the applicant demonstrates compliance with the terms, conditions and performance standards set forth in this chapter. Any such permit denominated as a conditional use must also meet the criteria for said use permits set forth in Section 19.68.090 AMC.

19.68.050. Substantial Modifications.

(A) “Substantial Modification” for purposes of this Chapter means a modification to an existing facility that meets any of the following criteria.

Criteria 1:

(1) For towers outside of public rights-of-way, if the modification increases the height of the tower by the greater of: (i) more than 10%, or (ii) by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed twenty feet; or

(2) For those towers in the rights-of-way and for all base stations, if the modification it increases the height of the tower or base station by the greater of: (i) 10% or (ii) 10 feet.

Criteria 2:

(1) For towers outside of public rights-of-way, if the modification protrudes from the edge of the tower the greater of: (i) 20 feet, or (ii) the width of the tower structure at the level of the appurtenance; or

(2) For those towers in the rights-of-way and for all base stations, if the modification protrudes from the edge of the structure more than 6 feet;

Criteria 3:

(1) For any eligible wireless support structure, if the installation includes new equipment cabinets, if the modification includes the installation of more than 4 equipment cabinets; or

(2) For towers in the public rights-of-way and base stations, if the modification 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.

Criterion 4:

For all existing facilities, if the modification entails any excavation or deployment outside the current site;

Criterion 5:

For all existing facilities, if the modification defeats the existing concealment elements of the tower, base station, or any other wireless support structure.

Criterion 6:

For all existing facilities, if the modification violates any of the conditions of approval (besides modification allowed under criteria #1-5) associated with prior approval(s).

19.68.060 Non-Substantial Modifications.

(A) "Non-substantial Modification" means a modification that meets all of the following criteria:

Criteria 1:

(1) For towers outside of public rights-of-way, if the modification does not increase the height of the tower by the greater of: (i) more than 10%, or (ii) by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed twenty feet; or

(2) For those towers in the rights-of-way and for all base stations, if the modification does not increase the height of the tower or base station by the lesser of: (i) 10% or (ii) 10 feet.

Criteria 2:

(1) For towers outside of public rights-of-way, if the modification does not protrude from the edge of the tower by the greater of: (i) 20 feet, or (ii) the width of the tower structure at the level of the appurtenance; or

(2) For those towers in the rights-of-way and for all base stations, if the modification does not protrude from the edge of the structure more than 6 feet;

Criteria 3:

(1) For any eligible support structure, if the installation includes new equipment cabinets, the modification does not include the installation of more than 4 equipment cabinets; or

(2) For towers in the public rights-of-way and base stations, if the modification does not involve the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the tower, and does not involve the installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the tower.

Criterion 4:

For all existing facilities, if the modification does not entail any excavation or deployment outside the current site

Criterion 5:

For all existing facilities, if the modification does not defeat the existing concealment elements of the tower or base station or other wireless support structure.

Criterion 6:

For all existing facilities, if the modification does not violate any of the conditions of approval (besides modification allowed under criteria #1-5) associated with prior approval(s).

19.68.070. Non-Substantial Modification applications.

(A) For the purposes of this section, a complete application includes:

(1) The name and address of the applicant;

(2) A description of the proposed modification;

(3) Scaled construction plans showing the following:

(a) Location, type, dimensions, height, materials and color of the proposed or existing tower or structure;
(b) Location, type, dimensions, height, number, color and technical specifications of proposed antennas;
(c) Location, type, dimensions, gross floor area, height, materials and color of proposed equipment structure;
(d) Location of exhaust ports or outlets;
(e) Location of existing and proposed power, telephone and other utilities serving the site.
(f) Specific landscape, screening and fencing materials. Landscape plans shall include size, species, location, distance apart, plus irrigation and maintenance plans.
(g) Proposed setbacks from property lines, nearest residential unit and residentially zoned properties.
(h) Location of adjacent roadways and proposed means of access;
(i) Location and extent of any streams, wetlands, or landslide hazard areas on or within 100 feet of the underlying property;
(j) Lot size and lot coverage calculations for the underlying property.

(4) If the modification includes the addition of antennas: photo simulations of the proposed facility from affected residential properties and public rights-of-way.

(5) Dimensioned elevation drawings of the existing tower or structure showing the existing and proposed antennas, and equipment structures (at 1/8” = 1’ or comparable scale).

(6) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure, along with any subsequent approval(s) granting modification to the tower or wireless facilities on the structure;

(7) Identification of all carriers using the facility;

(8) If new equipment cabinets, generators, or any other ground equipment components are being proposed, an assessment of noise that shows compliance with City noise standards.

(B) Eligible facilities for review under this section include Non-Substantial Modifications to the physical dimensions of the base structure or tower, involving (i) colocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission structure.

(C) Within the applicable timeframe for review set forth in Section 19.68.120, the City must approve the application unless it determines that the application involves a Substantial Modification. If the City determines that the application involves a Substantial Modification, the applicant must submit the appropriate Permit application required, if any, under the requirements in Section 19.68.080.

19.68.080 Permit application.

(A) Application. A complete application for a wireless service facility permit or conditional use permit must include the following information and materials on a form provided by the Director. This section supplements the requirements in Chapter 19.40 AMC.

(1) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.180. This includes, but is not limited to:

(2) A scaled Site plan clearly indicating the location, type and height of the proposed facility, or colocation, on-site land uses and zoning, adjacent land uses and zoning, comprehensive plan classification of the Site, proposed means of access, setbacks from property lines, spacing between tower(s) and other structures, elevation drawings of the proposed tower and any other structures, topography of the site, and proposed parking;
(a) Legal description of the parent tract and leased parcel (if applicable);

(b) A landscape plan showing specific landscape materials;
(c) Method of fencing, the finished color and, if applicable, the method of camouflage and illumination.

(3) A description of compliance with the additional requirements in this Chapter for colocating and/or for conditional uses, if applicable.

(4) Any engineering report(s) required to show feasibility of meeting the applicable criteria in subsections (a) and/or (b) as applicable;

(B) New facilities. In addition to the application materials delineated in subsection (1) above, an application for a new facility must provide:

(1) A notarized statement by the applicant as to whether construction of a new facility will accommodate colocating of additional antennas for future users.

(2) An explanation of how the proposed new facility at the proposed location is necessary to do one of the following: fill a significant gap in service, to introduce new services, to densify a network, or to otherwise improve service capabilities.

(3) A description of the suitability of the use of existing facilities, including towers or other structures to provide the services to be provided through the use of the proposed new facility.

(C) Third Party Review. The City may require the applicant to submit its materials to a third-party for review, as may be reasonably necessary to determine compliance with this Chapter, such as an engineer or architect, by way of example only.

(D) Fee. Every application for a wireless service facility permit or conditional use permit must be accompanied by an application fee which will be set by the City Council in its unified fee schedule, to reimburse the City for the costs of reviewing the application, including any third-party review required by the City, and fees equal to the a reasonable approximation of the objectively reasonable costs for the attachment to or use of property owned or controlled by the City.

19.68.090 Permit approval process.

(A) Wireless service facility permit (WSF). The review process for wireless service facility permit applications is that for a Type 1 (Administrative Ministerial Action) as delineated in Section 19.20.030 AMC.

(B) Wireless conditional use permit (WCUP). The review process for wireless conditional use permit applications is that for a Type 3-HE review, delineated in Section 19.20.030 AMC. The criteria for a conditional use permit as set forth in other provisions of the City's code does not apply.

19.68.100 Permit review - general criteria.

(A) In evaluating a permit application under this Chapter, the Director must examine the following criteria:

(1) Whether all requisite licenses, certificates, and authorizations from applicable Federal, State, and local agencies have been obtained by the applicant;

(2) Whether the applicant has shown that its proposed facility or colocation meets the standards and criteria set forth in this Chapter, including the visibility and performance criteria set forth in Section 19.68.180;

(3) Whether the applicant has shown that its proposed facility meets any additional requirements in this Chapter for colocating, if applicable.

(B) For a new facility, whether it is necessary to fill a significant gap in service, to introduce new services, to densify a network, or to otherwise improve service capabilities.

(C) Decision. After considering all information submitted, and the record on file and from any hearing, the proper City official will decide whether to grant, deny, or grant the permit with conditions, and must issue a written decision containing findings of fact supported by substantial evidence, based on the criteria above.

(D) Issued permit. Any wireless service facility permit that is issued under this Chapter must contain the location, nature, and extent of approved use, together with all conditions that are imposed. A copy of the permit will be kept on file and reviewed annually by the administrating City official. If, at any time, the use no longer complies with the stated conditions, the owner will be declared in violation of this chapter.

19.68.110 Permit review - supplemental criteria for conditional uses.

(A) In addition to the general criteria for approval uses set forth in this Chapter, the following criteria apply to all permits denominated as conditional uses:

(1) The applicant must demonstrate that visual, noise, and other impacts associated with the proposed facility have been minimized to the maximum extent possible using existing concealment technology, site design, noise abatement techniques, concealment, disguise, camouflage, and/or the use of architecturally compatible improvements to existing structures where permitted, and/or underground placement of ancillary equipment. In evaluating the site design, consideration will be given to whether the facility will blend into the surrounding topography, tree coverage, foliage, and other natural features and whether locating the facility in alternative locations upon the subject property, or reasonably available properties, would better conceal the facility through use of existing natural and built features;

(2) The applicant must demonstrate that the design of the proposed facility complies with the purpose and intent of this chapter, including, but not limited to, the visibility and performance standards set forth in AMC 19.68.180 which most closely match the proposed facility;

(3) The applicant must demonstrate that alternative locations, including other colocations and alternative support structures, are not available for the proposed facility;

(4) The applicant must demonstrate that the proposed facility is not in conflict with the health and safety of the community;

(5) The applicant must demonstrate that the proposed facility will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities.

(B) In evaluating any proposed wireless service facility denominated as a conditional use, the Director may, at the expense of the applicant, retain an outside consultant to review the technical, design and other materials submitted by the applicant in conjunction with the proposal.

19.68.120 Completeness review.

(A) Completeness Review. Applications must be reviewed for completeness within thirty days of receipt, except for applications to site Small Wireless Facilities, which must be reviewed for completeness within ten days of receipt. If the application is not reviewed for completeness within the applicable timeframe, it will be deemed complete.

(B) Tolling. For applications to site Small Wireless Facilities, the review period resets once an applicant submits its additional materials. For all other applications deemed incomplete, the review period is tolled for up to sixty days. Once an applicant submits additional materials, the review timeframe begins to run again. If the applicant does not submit the required materials, the City may deny the application.

(C) Submittal of Additional Materials. If an applicant submits additional materials, the Director must provide notice within ten (10) days as to any additional materials identified in the original notice that were not provided with the supplemental materials. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness. For second or subsequent notices of

incompleteness, the review timeframe will be tolled for all applications including for siting Small Wireless Facilities. If the applicant does not submit the required materials, the City may deny the application.

(D) Failure to act. If the Director fails to approve or deny a request seeking approval for either a wireless service facility permit or conditional use permit within the applicable timeframe for review, accounting for any tolling, the request is deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired that the application has been deemed granted.

19.68.130 Timeframe for review.

The timeframe for review of an application for a master permit or a construction permit begins to run when an application is submitted, not when the application is deemed complete.

	Modifications that are not Substantial.	**Colocating Wireless Facilities**	**New Wireless Facility**	**Colocating Small Wireless Facilities**	**New Small Wireless Facility**
Timeframe	Approval required within sixty (60) of receipt of a complete application	Written decision due within ninety (90) days of receiving a complete application	Written decision due within one hundred and fifty (150) days of receiving a complete application.	Written decision due within sixty (60) days of receiving a complete application	Written decision due within ninety (90) days of receiving a complete application.
Notes	If the City finds that the application involves a Substantial Modification, the City may process the application as one for a new facility or deny the application.	A colocation application that does not involve a Substantial Modification must be submitted as a Modification that is not Substantial. This provision does not apply to Small Wireless Facilities.	This provision does not apply to Small Wireless Facilities.	A colocation application that does not involve a Substantial Modification must be submitted as a Modification that is not Substantial.	

19.68.140 Construction.

(A) Construction within two years. Construction or substantial progress toward construction of a facility for which a permit has been issued pursuant to this chapter must be undertaken within two years after approval of the permit. Substantial progress toward construction includes, but is not limited to: the letting of bids, making of contracts, and purchase of materials involved in development.

(B) Tolling. In determining whether the two-year period has run, time during which litigation has been pending related to the construction of the facility must not be included.

(C) Extension and termination. The city may, at its discretion, extend the two-year period for a reasonable time, based on factors including the inability to expeditiously obtain other required governmental permits prior to the commencement of construction. If a facility for which a permit has been granted has not been completed within three years after the approval of a permit by the city council, the city council must review the permit upon the expiration of three years, and upon a showing of good cause for the delay, either (a) extend the permit for one year; or (b) terminate the permit.

19.68.150 Appeals.

Appeals may be commenced on an action by the Director on a permit application, within thirty days of such act or failure to act, in any court of competent jurisdiction. This provision supersedes the appeal process set forth in Chapter 19.40.

19.68.160 Prohibited Locations.

(A) Lattice and guyed wire towers are not permitted in any zoning district.

(B) Commercial advertising including billboards and business identification signs may not be used as alternative antenna support structures.

(C) Construction and/or installation of new wireless facilities are prohibited within the Commercial Business District and South Commercial District. These prohibitions will not apply if they inhibit the densification of a network or otherwise materially impair the provision of wireless services.

19.68.170 Permitted locations.

New wireless service facilities, which includes new Small Wireless Facilities are permitted as follows, with the type of permit indicated. For those facilities located within a "right-of-way", a master permit and construction permit for such use is required under the provisions of Chapter XX.XX.

Type of Facility	**Residential Zones** (R1, R2, R2A, R3, R3A, R4, R4A, OT)	**Mixed Use Zones** (CBD, C, SC, MMU, CM, CM2, P)	**Industrial Zones** (LM, LM1, MS, HM, I, AZ)
Street Pole	Permitted with WSF, except permitted with WCUP in OT.	Permitted with WSF, except permitted with WCUP in P and except not permitted in CBD and South Commercial.	Permitted with WSF
Electric Transmission Towers	Permitted with WSF, except permitted with WCUP in OT.	Permitted with WSF, except permitted with WCUP in P and except not permitted in CBD and South Commercial.	Permitted with WSF
Utility Poles Outside Public Rights-of-Way	Permitted with CUP	Permitted with WSF, except permitted with WCUP in P, and except not permitted in CBD and South Commercial.	Permitted with WSF
Water Tank Mounted	Permitted with WSF, except permitted with WCUP in OT.	Permitted with WSF	Permitted with WSF
Playfield, Ballfield and Stadium Light Mounted Facilities	Permitted with CUP	Permitted with WSF	Permitted with WSF
Building Attached	Permitted with WSF, only for nonresidential uses, except permitted with WCUP in OT.	Permitted with WSF.	Permitted with WSF

Type of Facility	Residential Zones (R1, R2, R2A, R3, R3A, R4, R4A, OT)	Mixed Use Zones (CBD, C, SC, MMU, CM, CM2, P)	Industrial Zones (LM, LM1, MS, HM, I, AZ)
Monopoles	Permitted with CUP	Permitted with CUP, except permitted with WCUP in P, and except not permitted in CBD and South Commercial.	Permitted with CUP
Stealth Support Structure	Permitted with WSF, except permitted with WCUP in OT.	Permitted with WSF, except permitted with WCUP in P.	Permitted with WSF
Any Other Support Structure	--	Permitted with CUP	Permitted with CUP

19.68.180 Visibility and performance standards.

All wireless service facilities locating within Anacortes must comply with the following standards:

(A) Standards for all types of facilities:

General	1. All portions of the facility must be the minimum size necessary to support operation of the facility, as certified by the provider's licensed engineer. Where multiple facilities are proposed to be located in close proximity, they may be required to be consolidated in one equipment housing structure. 2. Owners and operators must provide information regarding the opportunity for the co-location of facilities. Provision for future co-location may be required if technically feasible and where opportunities for smaller facilities with fewer impacts are limited due to topography, lack of existing above ground structures or other circumstances. To determine feasibility, the applicant must submit an engineer's report regarding the feasibility of co-location.
Antennas	1. In general, an antenna array must either be flush mounted within 12 inches of the support structure, or within 12 inches of the face of the building it is attached to; or be contained in a canister that is a continuation of the support structure it is located on and is centered on top of the support structure; or be placed pursuant to the City's adopted design standards in Chapter 19.62 AMC, subject to the concealment requirements below. 2. All antennas or arrays must be a color and material that matches the support structure. 3. Roof-mounted installation of antennas is permitted when the City's adopted design standards in Chapter 19.62 AMC and the Appearance and Screening requirements below have been met. The antennas, mounting brackets and any concealment structures are exempt from the height limit of the underlying zone to the extent that the total height of such facilities does not increase the overall building height by 18 feet, or 50 percent of the original building height, whichever is less.
Equipment Cabinets, Shelters, and Undergrounding	1. All equipment necessary for the operation of the facility must be concealed, either within an existing building, within an architecturally compatible addition to an existing building, or within a new building which is architecturally compatible with other buildings on the site and adjoining properties; or located underground with exceptions as stated in Chapter AMC 15.32, and excepting equipment cabinets and shelters, which may be located above ground, and landscaped and screened pursuant to the requirements set forth in Chapter AMC 17.41. 2. This section does not apply to antennas or other facilities that are required to remain above-ground in order to be functional, or if it would otherwise materially inhibit wireless service. 3. Underground shelters are not allowed where such shelters would interfere with existing uses of public land including, but not limited to, public rights-of-way. Equipment enclosures less than or equal to five cubic feet, with no single dimension over three feet, may be mounted directly on a

	street pole. 4. Equipment cabinets and shelters are permitted upon abutting private property and may be located within public rights-of-way, pursuant to the applicable requirements and obtaining the appropriate permits specified in Chapter AMC XX.XX. 5. The size of equipment cabinets and shelters must be minimized to the greatest extent possible. 6. Prefabricated concrete and metal structures for equipment enclosures are not permitted unless treated with a facade giving the appearance of masonry or wood siding and are compatible with the existing neighborhood and surrounding setting.
Appearance and Screening	The following standards must be met to ensure the facility minimizes its visual impact: 1. Design and configurations must be compatible with the existing neighborhood, blend in with the surrounding setting, and/or are screened from surrounding uses and properties. 2. Design and configurations must minimize visual intrusion of the facility on surrounding uses and properties. Such techniques may include, for example: containing transmission and power cables and other conduit within any support structure, locating facilities underground, or otherwise screening the facility; minimizing the lateral projection of antenna arrays to the greatest extent technically feasible; and integrating antenna arrays into the design of any structure to which they are attached. The applicant must submit an engineer's report regarding the feasibility of the lateral projection of antenna arrays. 3. Facilities on private property must be screened through the use of mature trees that are a minimum of 20 feet tall and planted to screen at least 80 percent of the area around the facility. 4. For stealth supported structures, the structure must be designed to resemble an object that would be commonly found in the area, including, but not limited to, a flagpole, a clock or bell tower, a tree that is a native conifer species, or a silo. Antennas, to the maximum extent feasible, must be concealed by the stealth support structure, or must not be easily recognized. To determine feasibility, the applicant must submit an engineer's report regarding the feasibility of concealing the antennas.
Noise	Noise reduction measures must comply with Section 17.54.010 AMC, or the standards set forth with the Federal Interagency Committee on Urban Noise, whichever demonstrates the least amount of noise impact for the nearest residential dwelling(s) at any time of day or night, as measured from the closest point from the exterior of the dwelling to the wireless facility. Such requirements are exempt during testing of alternative power sources (i.e., power generators or similar emergency power sources).
Landscaping	1. Facilities must be surrounded with a minimum of four feet wide landscaping, in the applicable zones set forth in Section 17.41.040(B) AMC. 2. Towers must be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from properties used for residences. In some cases, natural growth around the property perimeter may provide a sufficient buffer. 3. Existing mature tree growth and natural land forms on the site must be preserved to the maximum extent possible.
Setbacks	1. In residential zones, towers must not be closer than the greater of 20' or 100% of the tower height from the adjoining lot line. 2. In non-residential zones, facilities must comply with the setback requirements set forth in the applicable zoning code, Chapter 17 AMC, and meet or exceed the noise standards set forth in Section 17.54.010 AMC or the Federal Interagency Committee on Urban Noise, whichever demonstrates the least amount of noise impact for the nearest residential dwelling(s), as measured from the closest point from the exterior of the dwelling to the facility. 3. The setback may be reduced if the applicant uses noise abatement techniques, such as decorative noise walls, to achieve equivalent or greater reduction of visual and noise impacts from the facility. 4. For co-locations, new equipment associated with the facility must be placed no closer to existing residential uses than any existing equipment enclosure on the subject property.
Spacing	1. In residential zones, towers and antennas must not be closer than 200' or 100% of the tower height from the nearest residential dwelling(s), as measured from the closest point from the

	exterior of the dwelling to the facility. 2. In non-residential zones, there are no spacing requirements. 3. The minimum spacing requirements herein will not apply if they have the effect of materially inhibiting wireless service.

(B) Standards for specific types of facilities:

Street Poles	1. More than one facility may be colocated on any street pole, subject to the permits. 2. Street poles located within public rights-of-way must be located a minimum of 500 feet apart; a shorter distance may be approved if the applicant submits an engineering analysis and equipment specifications that demonstrate the reduced distance is necessary to provide adequate coverage and/or capacity. 3. Where a utility located upon a street pole requires vertical separation between its facilities and the antenna(s), the structure/pole and antenna may be raised or replaced with a taller structure to accommodate the minimum separation requirement, not to exceed 30 feet. Any additions must be constructed of similar materials, and have surface treatments which match the color and texture of the original facility.
Electric Transmission Towers or Utility Poles Outside Public Rights-of-Way	Where a utility located upon the support structure (such as a street pole) requires vertical separation between its facilities and the antenna(s), the structure/pole and antenna may be raised by a mount or replaced with a taller structure to accommodate the minimum separation requirement, not to exceed 30 feet. Any additions must be constructed of similar materials, and have surface treatments which match the color and texture of the original facility.
Playfield, Ballfield and Stadium Light Mounted Facilities	Only one facility is permitted on any pole. Where lighted signs and illuminated areas are permitted, such illuminating devices must be shaded and directed so as not to be visible from any residentially zoned property. (Ord. 2902 § 8, 2013)
Building Attached	The equipment for roof-mounted antennas within the NB zone must be located within the same building on which the antennas are located. This provision will not apply to Small Wireless Facilities if it has the effect of materially inhibiting the provision of service.
Monopoles and Stealth Support Structures	Any wireless service provider which proposes to construct a new monopole or stealth supported facility must provide, as part of its permit application, written findings from a qualified engineer which demonstrate that: 1. Either there are no other facilities reasonably available for colocation; or 2. Any existing facilities reasonably available are not technologically suitable for use by the applicant; and 3. The proposed monopole or other stealth support structure has been designed in a manner that will allow for the colocation of at least one additional antenna array on the structure. 4. The height of the facility is not greater than 120 feet.

19.68.190 Requirements for colocations.

(A) All wireless facilities colocating within the City of Anacortes, which involve Substantial Modifications, including Small Wireless Facilities, must meet the following standards.

(B) Colocations are permitted on existing street poles, monopoles and on existing stealth support structure facilities, so long as the colocation maintains the appearance of the existing structure, and do not interfere with the City's placement of cameras or other public safety uses.

(C) The height of the existing facility may be increased by the minimum separation necessary between the facilities, not to exceed 20 feet; except for towers and utility poles outside public rights-of-way, the height of which may be increased by up to thirty feet to accommodate the minimum separation requirement.

(D) Existing monopoles and antenna support structures may be replaced to accommodate colocation. Monopoles and stealth support structures must, to the maximum extent feasible, be located within 20 feet of the existing structure, and maintain the design of the original structure. To determine feasibility, the applicant must submit an engineer's report regarding the feasibility of a proposed location.

(E) All antenna support structures permitted pursuant to the terms of this chapter or otherwise located within the City of Anacortes must be made available for use by the owner or initial user thereof, together with as many other wireless service providers as can be technically colocated thereon. The owner of an antenna support structure may charge a reasonable fee for the colocation of additional facilities upon said structure which does not exceed the fair market value for the space occupied by said colocated facilities. If the City is the owner, it may not charge a fee that exceeds a reasonable approximation of the objectively reasonable costs associated with siting a Small Wireless Facility on the antenna support structure.

(F) Colocating facilities must meet all other visibility and performance standards in Section 19.68.180.

19.68.200 Requirements for Non-Substantial Modifications.

All modifications to wireless service facilities to the existing facility, including Small Wireless Facilities, that are Non-Substantial, must comply with the following standards:

(A) No modification may violate the noise provisions in Section 17.54.010 AMC, or the standards set forth with the Federal Interagency Committee on Urban Noise. A noise study must be submitted with any modification to antennas or equipment.

(B) No modification may violate setback or other lot coverage or height requirements in this Chapter.

19.68.210 Maintenance of facilities.

The owner and/or operator of all wireless service facilities must maintain their facilities in a good and safe condition and in a manner which complies with all applicable Federal, State, and local requirements.

19.68.220 Testing of facilities required – Radio-frequency (RF) emissions.

(A) All wireless service facilities must comply with applicable Federal Communications Commission (FCC) regulations regarding radio-frequency emissions. All tests must be performed by or under the supervision of a professional engineer competent to perform such testing and interpret the data gathered.

(B) Reports or similar support documents must be submitted for all facilities confirming compliance with all applicable FCC regulations. Compliance reports are required when requested by the Director.

(C) If at any time radio-frequency emission tests show that a facility exceeds any of the standards established by the FCC, the owner or operator thereof must immediately discontinue use of the facility and notify the Director. Use of such facilities may not resume until the owner or operator demonstrates that corrections have been completed which reduce the radio-frequency emissions to levels permitted by the FCC.

19.68.230 Testing of facilities required – Noise emissions.

(A) The owner or operator of a wireless service facility must conduct tests necessary to demonstrate compliance with all applicable local regulations regarding the noise emissions of the facility when notified in writing by the Director that a noise complaint has been received regarding the facility. All such tests must be performed by or

under the supervision of a licensed environmental noise consultant competent to perform such tests and interpret the data gathered.

(B) When such a report is required, a report, certified by a licensed environmental noise consultant, setting forth the observed noise levels at the property line of the property upon which the facility is located must be submitted. The report must account for background noise and other noise sources and demonstrate the noise levels emitted by the facility, including any air conditioning or ventilation equipment contained therein. Such report must address standards set forth within noise reduction measures within noise provisions in Section 17.54.010 AMC or the standards set forth with the Federal Interagency Committee on Urban Noise, whichever demonstrates the least amount of noise impact for the nearest residential dwelling(s), at any time of day or night, as measured from the closest point from the exterior of the dwelling to the wireless facility.

(C) The Director may retain a technical expert in environmental noise measurement to verify the noise measurements and certification. The cost of such a technical expert must be borne by the owner or operator of the facility, if said facility fails to comply with applicable State or local noise standards.

(D) This section does not apply during the testing of alternative power sources (i.e., power generators).

19.68.240 Security fencing.

All wireless service facilities must be protected from unauthorized entry. The perimeter of all wireless service facilities which include an antenna support structure must be secured with security fencing which does not exceed seven feet in height. Wireless service facilities that do not include an antenna support structure must be protected from unauthorized entry through appropriate means approved by the Director or his or her designee on a case-by-case basis consistent with the purpose of protecting the public health, safety, and welfare.

19.68.250 Abandonment of facilities.

Any antenna support structure that has had no antennas mounted upon it for a period of six months, or if the antennas mounted thereon are not operated for a period of six months, will be considered abandoned, and the owner thereof must remove such structure and any accompanying equipment and enclosure within 90 days after receipt of a notice from the Director to do so. The Director may extend this time period to a maximum of six additional months. The owner or operator of all wireless service facilities must, when requested by the Hearing Examiner, submit a written report, signed under penalty of perjury, which demonstrates whether or not there has been a cessation in use of the facility for a period of six months during the prior year. If a facility and associated equipment are not removed within 90 days after receipt of a notice from the Hearing Examiner requiring said removal, the Hearing Examiner may seek and obtain a court order directing such removal and imposing a lien upon the real property upon which such wireless service facility is situated in an amount equal to the cost of removal. In the event that more than one wireless service provider is using the antenna support structure, the antenna support structure will not be considered abandoned until all such users cease using the structure as provided in this section.

19.68.260 Signs.

Except as approved as part of a plan to conceal, disguise, or camouflage a wireless service facility, no signs, symbols, flags, banners, or similar devices must be placed on, attached to, painted, or inscribed upon any antenna support structure or alternative antenna support structure. Notwithstanding the foregoing, an applicant and/or land owner may place not more than four signs measuring 12 by 18 inches upon or near a wireless service facility which:

(A) state that trespassers will be prosecuted;

(B) list the names and telephone numbers of persons to be contacted in the event of an emergency;

(C) identify the applicant and/or land owner or person responsible for operating the wireless facility; and/or

(D) contain information necessary and convenient for the person operating the wireless service facility to identify the wireless service facility.

Nothing in this section may be construed to prohibit the placement of safety or warning signs upon any portion of the wireless service facility which are required by law or which are designed to apprise emergency response personnel and the employees and agents of wireless service providers of particular hazards associated with equipment located upon the wireless service facility.

19.68.270 Lighting standards.

Except as specifically required by Federal Aviation Administration (FAA) or FCC regulations, antenna support structures cannot be illuminated. However, equipment enclosures may be illuminated for security reasons when compatible with the surrounding neighborhood.

19.68.280 SEPA.

Integration of environmental review. An application for a wireless service facility permit or conditional use permit that is subject to the State Environmental Policy Act (SEPA) must be reviewed per AMC Chapter 18.04 concurrently with the review of the permit reviewed under this Chapter, except where exempted by that chapter. If there is a conflict between this Chapter and development regulations in other Chapters, the provisions of this Chapter will apply.

Chapter XX.XX

PUBLIC UTILITY AND TELECOMMUNICATIONS

RIGHT-OF-WAY USE*

Sections:

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XX.XX.010 Purpose.

The purpose of this chapter is to provide for the regulation of the use of public right-of-way by any business, service, or person which is engaged in supplying the public with some commodity or service which is of public consequence and need, such as public and private utilities, wireless telecommunications or transportation service.

XX.XX.020 Applicability.

The provisions of this chapter apply to all public utility and wireless carriers which occupy, use, construct, or maintain utility or telecommunications facilities within public right-of-way of the City.

To the extent the provision of any current franchise or other written agreement with a public utility or wireless carrier conflicts with any provision of this chapter, the applicable provision of the franchise or other written agreement prevails.

12.30.030 Definitions.

For the purposes of this chapter, the following terms, phrases, and words have the meanings set forth below unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(1) “Act” means a decision to grant, condition, or deny the use condition, or deny a permit, which may be subject to administrative appeal, or a notification to the applicant in writing of the amount of time that will be required to make the decision and the reasons for this time period.

(2) “Base station” means: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a “Tower” or any equipment associated with a Tower.

(A) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(B) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(C) The term includes any structure other than a tower that supports or houses equipment 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 such support.

(D) The term does not include any structure that does not support or house equipment for wireless telecommunications services.

(3) “City Engineer” means the City Engineer of the City of Anacortes, Washington acting in his or her official capacity, and his or her designee(s);

(4) “Complex project” means a construction project involving, by way of example only: adding, installing, or relocating numerous conduits, wires, lines, poles, pipes, cables, communication and signal lines, braces, guys, anchors, vaults, pedestals, antennas, and/or other structures, equipment and appurtenances to a public utility or wireless facility; navigating intricate or complicated facility or land ownership issues; determining whether significant environmental impact(s) exist; and/or the analysis of highly technical structural or engineering information or reports.

(5) “Emergency” means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City, including, but not limited to, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars;

(6) “Facilities” means all of the towers, equipment, fixtures, antennas, equipment cabinets, equipment shelters, and other appurtenances necessary to furnish and deliver wireless services, including but not limited to utility, monopoles, and street poles with cross arms or without cross arms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances

necessary or incidental to the distribution and use of wireless services. Facilities include "Small Wireless Facilities" as defined below.

(7) "Master permit" means the agreement whereby the City of Anacortes may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities. This definition is not intended to limit, alter, or change the extent of the existing authority of the City of Anacortes to require a franchise, nor does it change the status of a service provider asserting an existing statewide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution to occupy the right-of-way. For the purpose of this section, a franchise, except for a cable television franchise, is a master permit. A master permit does not include cable television franchises.

(8) "Overhead facilities" means utility poles, utility facilities and wireless facilities located above the surface of the ground, including the underground supports and foundations for such facilities;

(9) "Permittee" means the public utility, service provider, or other person authorized under a master permit or construction permit under the provisions of this Chapter.

(10) "Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers;

(11) "Public improvement" as used herein, means all work, construction, alterations, repair or improvements within public right-of-way, executed at the cost or under contract of the City, or caused to be performed by any person or entity as a condition or requirement of an approval or permit for zoning, land use, construction, or development if dedicated or required to be dedicated to the public use, benefit or enjoyment;

(12) "Public right-of-way" means any highway, street, alley, other public right-of-way, or easement for motor vehicle under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to such purposes, but only to the extent of the City's right, title, interest or authority to grant a permit to occupy and use such streets and easements for wireless and utility facilities;

(13) "Public utility" as used herein, means a company or entity engaged in any business or service regularly supplying the public with some commodity or service which is a public need and consequence, such as natural gas, electricity, water or sanitary sewer, including any business subject to regulation as to rates and service by the Utilities and Transportation Commission under the provisions of RCW Title 81;

(14) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any facilities used to provide and providing wireless service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city, or town.

(15) "Small Wireless Facility" encompasses facilities that meet the following conditions:

(A) The facilities—

(1) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
(2) are mounted on structures no more than 10 percent taller than other adjacent structures, or
(3) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(B) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

(C) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(D) The facilities do not require antenna structure registration under 47 CFR § 17.4;

(E) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(F) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

(16) “Surplus space” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by Federal or State orders and regulations, to allow its use by a public utility or wireless carrier for a pole attachment. “Surplus space” also includes usable space within underground conduits and ducts when the necessary clearance from other users, as required by Federal or State orders and regulations, can be achieved;

Deleted:

(17) “Underground facilities” means utility and wireless telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities;

(18) “Usable space” means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in any Federal or State orders and regulations;

(19) “Utility easement” means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes; and

(20) “Utility facilities” as used herein means all conduit, wires, lines, poles, pipes, cables, communication and signal lines, braces, guys, anchors, vaults, pedestals, antennas, and all other structures, equipment and appurtenances thereto owned, operated or maintained by a public utility and used to furnish utility services.

(21) “Wireless support structure” or “support structure” means a freestanding structure that is designed to support or is capable of supporting wireless facilities, including a monopole, base station, street pole, utility pole, self-supporting (lattice) tower, guy-wire support tower and any other similar structures. Any device (attachment device) used to attach a wireless facility to an existing structure or building (attachment structure) shall be excluded from the definition of and regulations applicable to support structures.

(22) “Wireless telecommunications carrier” or “wireless carrier” means and includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating, or managing any facilities used to provide wireless telecommunications for hire, resale to the general public within this State;

(23) “Wireless telecommunications” or “wireless” means the transmission of information by wire, radio, optic cable, electromagnetic, or 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, wireless telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals and excludes “cable services,” “cable communications systems” and “CATV systems” as defined in Chapter 5.44.

XX.XX.040 Master permit and construction permit required.

(A) It is unlawful to construct, place, maintain, or operate any pipes, ducts, utility tunnels, vaults, maintenance holes, poles, fixtures, wires, utility facilities, wireless facilities, or any other appurtenances necessary for the purpose of providing wireless service, or to conduct any public utility business, on, over, or under the public right-of-way, without obtaining a master permit from the Council.

(B) It is unlawful to construct, repair, or maintain any pipes, ducts, utility tunnels, vaults, maintenance holes, poles, fixtures, wires, utility facilities, wireless facilities, or any other appurtenances, necessary for the purpose of providing wireless service, or to conduct any public utility business or to go upon any such public right-of-way to perform any work therein on, under, or over public right-of-way, without obtaining a construction permit from the City Engineer. The City Engineer may exempt certain activities from the requirements of this section that do not materially affect the public right-of-way; provided, however, that if the City Engineer denies an applicant’s request for such an exemption, no appeal is permitted.

XX.XX.050 Construction permit application.

(A) To obtain a construction permit, the applicant must file an application with the City Engineer.

(B) A complete application must include the following information and materials:

(1) The names, residences, and business addresses of all officers and directors of the applicant.

(2) Detailed construction plans demonstrating compliance with all applicable City codes and construction specifications, including the City's Engineering Standards.

(3) If the applicant is constructing wireless facilities on another service provider's facilities, a notarized statement that the applicant has permission to use a third party's facility(ies), or a signed agreement with the service provider to that effect.

(4) The location of the applicant's overhead and underground facilities in the public right-of-way along the proposed route and the area proposed to be served by cable.

(5) Preliminary engineering plans, specifications, and maps of the facilities to be located within the public right-of-way, in sufficient detail to identify the location and route of the proposed facilities within the public right-of-way, the location of the applicant's existing facilities within the right-of-way, if any, and the specific trees, structures, facilities, and/or obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(6) If underground installation in existing ducts or conduits within the public right-of-way is proposed, information in sufficient detail to identify: the excess capacity currently available in such ducts or conduits before installation of the facilities; and the excess capacity, if any, that will exist in such ducts or conduits after installation of the facilities.

(7) If underground installation within new ducts or conduits to be constructed within the public right-of-way is proposed: the location proposed for the new ducts or conduits; and the excess capacity that will exist in such ducts or conduits after installation of the facilities.

(8) A preliminary construction schedule and completion date.

(9) A detailed statement describing the actual equipment and operational standards proposed by the applicant.

(10) A statement or schedule setting forth all proposed classifications of rates and charges to be set, including installation and service charges, which must remain in effect for at least twelve months after the City grants a master permit.

(11) Any other reasonable information requested by the City Engineer or its designee, or required by any other provision of any other ordinance of the City.

(12) An application fee to be set by the City Council in its unified fee schedule to allow the City to recover the costs of reviewing the application, including the costs of any third-party review.

(C) Third Party Review. The City may require the applicant to submit its materials to a third-party for review, as may be reasonably necessary to determine compliance with this Chapter, such as an engineer or architect, by way of example only.

XX.XX.060 Master permit application.

(A) To obtain a master permit, the applicant must file an application with the City clerk.

(B) The Council must examine each complete application submitted for review and approval to determine if it complies with the applicable provisions of this chapter. Other departments that have authority over the proposed use or activity may be required to review and approve or disapprove the application based on site-specific criteria, such

as that in 19.68 AMC. The Council may inspect the public right(s)-of-way proposed for use to determine any facts which may aid in determining whether a master permit should be approved.

(C) A complete application must include the following information and materials:

(1) The identity of the applicant, including all affiliates of the applicant who will be authorized to work in the right-of-way under the agreement;

(2) If the applicant is constructing wireless facilities on another service provider's facilities, a notarized statement that the applicant has permission to use such facilities, or a signed agreement with the service provider to that effect.

(3) If the application involves a Small Wireless Facility, preliminary engineering plans showing all dimensions of the wireless facility.

(4) A brief description of non-confidential, nonproprietary utility or wireless telecommunications services that are or will be offered or provided by the applicant over its facilities;

(5) A brief description of non-confidential, nonproprietary transmission medium that will be used to offer or provide such services;

(6) An accurate map showing the location of any existing utilities and/or wireless telecommunications facilities in the City that the applicant intends to use or lease;

(7) If installation of overhead facilities is proposed, evidence that Surplus Space is available for locating the facilities on existing utility poles along the proposed route;

(6) Preliminary engineering plans, specifications, and maps of the facilities to be located within the public right-of-way, in sufficient detail to identify the location and route of the proposed facilities within the public right-of-way, the location of the applicant's existing facilities within the right-of-way, if any, and the specific trees, structures, facilities, and/or obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(7) The area or areas of the City the applicant desires to serve and a schedule for building out (offering service to) the entire franchise area;

(8) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the services, including, but not limited to, evidence that the applicant has registered with the Washington Utilities and Transportation Commission;

(9) An application fee to be set by the Council in its unified fee schedule which allows the City to recover its actual administrative expenses that are directly related to receiving and approving a permit and license, to inspecting plans and construction, or to the preparation of a detailed statement.

(D) Third Party Review. The City may require the applicant to submit its materials to a third-party for review, as may be reasonably necessary to determine compliance with this Chapter, such as an engineer or architect, by way of example only.

XX.XX.070 Completeness review.

(A) Completeness Review. Applications for a master permit or construction permit must be reviewed for completeness within thirty days of receipt, except for applications associated with Small Wireless Facilities, which must be reviewed for completeness within ten days of receipt. If the application is not reviewed for completeness within the applicable timeframe, it will be deemed complete.

(B) Tolling.

(1) For applications for a master permit or construction permit for a Small Wireless Facilities, the review period resets once an applicant submits its additional materials.

(2) For all other applications deemed incomplete, the review period is tolled for up to sixty days. Once an applicant submits additional materials, the review timeframe begins to run again.
(3) If the applicant does not submit the required materials within the required timeframe, the City may deny the application.

(C) Submittal of Additional Materials.

(1) If an applicant submits additional materials, the Director must provide notice within ten (10) days as to any additional materials identified in the original notice that were not provided with the supplemental materials.
(2) Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness. For second or subsequent notices of incompleteness, the review timeframe will be tolled for all applications including those pertaining to Small Wireless Facilities.
(3)If the applicant does not submit the required materials, the City may deny the application.

(D) Failure to act. If the Director fails to approve or deny a request seeking approval for either a wireless service facility permit or conditional use permit within the applicable timeframe for review, accounting for any tolling, the request is deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired that the application has been deemed granted.

XX.XX.080 Timeframe for review.

The timeframe for review of an application for a master permit or a construction permit begins to run when an application is submitted, not when the application is deemed complete. The timeframe for submitting and reviewing master permits and construction permits is the same, unless otherwise specified.

	Colocating Wireless Facilities	Colocating Small Wireless Facility	New Small Wireless Facility	New Wireless Facilities	Construction Permit – All Wireless Facilities	Master Permit Renewal – All Wireless Facilities
Application Submission	Master use and construction permit applications should each be submitted 90 days prior to planned use.	Master use and construction permit applications should each be submitted 60 days prior to planned use.	Master use and construction permit applications should each be submitted 90 days prior to planned use.	Master use and construction permit applications should each be submitted at least 120 days prior to planned use.	Applications for complex projects should be submitted at least 60 days prior to the planned use, and in no case less than 30 days prior to the planned use.	A Permittee may submit an application for renewal no more than 180 days and no less than 120 days before expiration of the current master permit.
Timeframe for decision (from receipt of complete application)	Written decision due within 90 days.	Written decision due within 60 days.	Written decision due within 90 days.	Written decision due within 120 days.	City Engineer must Act within a reasonable time, generally not to exceed 30 days, and in no case can he or she exceed the timeframes for review set forth in this table.	Written Decision due within 90 days.

XX.XX.090 Construction permit approval.

(1) In the event that the City Engineer finds that the construction permit application conforms to the requirements of this chapter and applicable construction standards adopted by the City, the City Engineer must approve the

construction permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare and safety, to mitigate any impacts resulting from the use, and to facilitate the orderly management of other utility and wireless facilities within the public right-of-way.

(2) In the event that the City Engineer denies an application for a construction permit, the decision must be in writing and set forth the reasons for said denial, and must be based on substantial evidence in the written record. The City may not deny a construction permit on the basis of a failure to obtain a master permit. Following approval by the City Engineer, construction permits will be issued by the City clerk.

(2) The City Engineer has the discretion to approve a blanket construction permit for a period of up to one year, when the applicant seeks approval to perform construction or maintenance that is of a repetitive or similar nature.

(3) In evaluating a construction permit application under this chapter, the City Engineer must, in addition to the criteria set forth in AMC XX.XX.050(2), determine whether the proposed construction is consistent with all construction standards adopted by the City.

(4) The duration of a construction permit will be for one year unless revoked or modified under the provisions of this chapter. The City Engineer must approve a construction schedule specifying the dates, times, and duration during which construction activity is permitted within the public right-of-way.

(5) The construction permit incorporates the relevant terms and conditions of this chapter by reference.

(6) The City Engineer has the power to regulate the construction and enforce construction permit conditions and the requirements of this chapter. The City Engineer must keep a record of the construction permit and the work done thereunder.

(7) A service provider adversely affected by a final action denying a construction permit may commence an action within thirty (30) days to seek relief, in any competent court of jurisdiction.

XX.XX.100 Master permit approval.

(1) In the event the Council finds that master permit application conforms to the requirements of this chapter and the criteria for approval set forth in subsection (2) of this section, the Council must approve the master permit, and may impose conditions that are reasonably necessary to protect the public health, welfare, and safety and to mitigate any impacts resulting from the use. The Council will provide the reasons for a denial in writing, supported by substantial evidence contained in the written record based on the criteria set forth below. Following approval, the applicant and the Council must enter into a written agreement setting forth the particular terms under which the applicant has been granted the right to occupy and use the public ways of the City.

(2) In evaluating a master permit application under this chapter, the Council will, consistent with Federal and State law, examine the following criteria:

(a) Whether all requisite licenses, certificates, and authorizations from applicable Federal, State, and local agencies have been obtained by the applicant;

(b) The capacity of the public right-of-way to accommodate additional utility and wireless telecommunications facilities if the master permit is granted;

(c) The effect, if any, on public health, safety and welfare if the master permit is granted;

(d) The availability of reasonable alternate routes and/or locations in the right-of-way for the proposed facilities;

(e) Whether denial of the use of the right-of-way would materially inhibit or limit the ability of the service provider to compete in a fair and balanced regulatory environment.

(e) Applicable Federal, State, and local statutes, regulations, ordinances, and policies related to utility, wireless telecommunications, and other facilities, including City construction standards;

(f) Such other factors as may demonstrate that the grant to use the public right-of-way will serve the community interest.

(3) The duration of a master permit is five years unless revoked or modified under the provisions of this chapter.

(4) No master permit granted under this chapter confers any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way of the City for delivery of wireless services or any other purposes. Further, no master permit may be construed as a right, title or interest in the public ways, but is a franchise solely to use and occupy the public right-of-ways for the limited purposes and terms stated within the grant. No master permit may be construed as a warranty of title.

XX.XX.110 Compensation to the City.

The City may fix a fair and reasonable compensation to be paid annually for the use of the right-of-way granted to the applicant under a master permit that is a reasonable approximation of the City's costs, including the costs of third-party review, if any; provided, that the City and an applicant may agree to the compensation to be paid; and provided that the compensation fixed or agreed upon is consistent with RCW 35.21.860.

XX.XX.120 Nondiscrimination.

A Permittee which purports to serve the general public must make its wireless telecommunication services available to any customer within its franchise area who requests such service, without discrimination as to the terms, conditions, rates or charges for the franchisee's services; provided, however, that nothing in this title prohibits a Permittee from making reasonable classifications among differently situated customers.

XX.XX.130 Amendment of Permit.

Except as otherwise provided within a master permit agreement, a new master permit agreement and grant is required for any wireless carrier or service provider that seeks to extend its franchise territory or to locate its wireless facilities in public rights-of-way in the City which are not included in a master permit previously granted under this chapter. If ordered by the city to locate or relocate its wireless telecommunications facilities in public rights-of-way not included in a previously granted master permit, the City must grant a master permit amendment without further application.

XX.XX.140 Renewal application – Master Permit.

(A) A Permittee may activate a formal process for renewal, by submitting an application for renewal, a completed master permit renewal application with the city clerk. The application must include the following:

(1) The information required under AMC XX.XX.060;

(2) Any information required under the master permit agreement between the City and the applicant;

(3) All deposits or charges required under this Chapter; and

(4) An application fee to be set by Council.

XX.XX.150 Renewal approval.

(A) The City must issue a written determination granting or denying the renewal application in whole or in part. If the renewal request is denied, the written determination must include substantial evidence of the reason(s) for denial, based on the standards set forth below. Prior to granting or denying renewal of a master permit under this Chapter, the Council must conduct a public hearing and make a decision based on the following criteria:

(1) The continuing capacity of the public right-of-way to accommodate the applicant's existing facilities;

(2) The applicant's compliance with the requirements of this title and the master permit agreement;

(3) Applicable federal, state, and local wireless telecommunications laws, rules and policies; and

(4) Such other factors that may demonstrate that the continued grant to use the public right-of-way will serve the community interest.

(B) The Council may not deny a renewal application based on violations of the master permit unless the applicant has been given notice and an opportunity to cure.

(C) Any service provider whose proposal for renewal has been denied by the City, or has been otherwise adversely affected by a failure of the City to act, may appeal such final decision or failure to act within 120 days in any Court of competent jurisdiction.

XX.XX.160 Terms of use and occupancy.

(A) The use and occupancy of public right-of-way in the City by any person constructing, maintaining or operating wireless, utility, or other facilities must conform to the terms and conditions of this chapter.

(B) Existing facilities installed or maintained by a telecommunications carrier, public utility or other entity over, under or across public right-of-way within the City in accordance with an expired franchise agreement or other City-issued permit may be operated by the wireless carrier or public utility at the locations at which such facilities exist; provided, however, that maintenance, repair, relocation, and/or expansion of such facilities are not permitted unless and until the public utility or telecommunications carrier, or other entity obtains all permits and approvals required by this chapter.

(C) All work by a wireless carrier, public utility, or other entity in the public right-of-way must comply with all construction standards and specifications adopted by the City as now exist or are hereafter amended, including but not limited to those set forth in Chapters 15.32 and 19.68 AMC.

XX.XX.170 Specifications.

(A) All work to be performed under a construction permit issued under this chapter must conform to all applicable City codes, ordinances, and standards adopted by the City. In case of any conflict, the most stringent provision applies.

(B) No wireless, utility, other facilities, or work related thereto may protrude into or over any portion of a public right-of-way opened to vehicle or pedestrian travel in such a manner as to create a risk of endangering the use of such place by vehicles or pedestrian travel. In addition, in the event the requested construction permit involves encroachment or partial obstruction of a sidewalk or other walkway open to the public, a minimum of five feet of unobstructed sidewalk or other walkway must be maintained at all times.

(C) During any period of any relocation, construction or maintenance of its facilities within the public right-of-way, a wireless telecommunications carrier, public utility or other person must conduct their activities so as not to unreasonably interfere with the free passage of traffic or the use of adjoining property. Such person must, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City and the laws of the State of Washington, including RCW 39.04.180, for the construction of trench safety systems.

(D) An applicant must , within 10 business days of completion of work, submit at no cost to the City, current and accurate as-built drawings showing the location of any facilities installed or constructed within the public right-of-way under a permit issued pursuant to this chapter or otherwise. As-builts must show all of the applicant's facilities in the right-of-way including but not limited to wireless telecommunications facilities, utility facilities, power poles,

guy poles and anchors, overhead transformers, pad-mounted transformers, submersible transformers, conduit, substation (with its name) pedestals, pad-mounted junction boxes, vaults, switch cabinets, and meter boxes.

XX.XX.180 Exceptions.

(A) A construction permit is not required when public utilities, wireless carriers, or City contractors are responding to emergencies that require work in the public right-of-way, such as water or sewer main breaks, gas leaks, downed power lines, or similar emergencies; provided, however, that the Council must be notified by the responding utility, carrier, or contractor verbally or in writing, on the next business day following onset of the emergency. Nothing in this section relieves a responding public utility, carrier, or contractor from the requirement of obtaining a construction permit after beginning emergency work in a public right-of-way.

(B) A construction permit fee is not required for City-sponsored capital improvement projects for water, sewer, drainage, or road construction maintenance, including associated work required by a public utility.

XX.XX.190 Security fund.

(A) Prior to commencement of any activities approved under a master permit, the Permittee must establish a permanent security fund with the City by depositing the amount of $50,000, or such greater amount as deemed necessary by the Council, with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund must be maintained at the sole expense of the Permittee so long as any of the Permittee's utility or wireless facilities are located within the public right-of-way of the City.

(B) The fund must serve as security for the full and complete performance of the terms and conditions of this chapter and master permit, including any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the Permittee to comply with the codes, ordinances, rules, regulations, or permits of the City.

(C) The fund may be used to repair the public right-of-way, return it to its original condition, or to complete a project within the right-of-way if the Permittee ceases work mid-way through construction, or abandons its facility(ies) and appurtenances thereto.

(D) Before any sums are withdrawn from the security fund, the City must give written notice to the Permittee:

(1) Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of the Permittee's act or default;
(2) Providing a reasonable opportunity for the Permittee to first remedy the existing or ongoing default or failure, if applicable;
(3) Providing a reasonable opportunity for the Permittee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
(4) That the Permittee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

(E) Permittees are required to replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.

XX.XX.200 Performance bond.

A performance bond written by a corporate surety acceptable to the City Engineer equal to at least 150 percent of the estimated cost of removing the Permittee's facilities and restoring the public right-of-way to their pre-construction condition must be deposited before the construction permit is issued. Said bond is required to remain in full force until 60 days after completion of the construction and/or improvements within the public right-of-way, and must warrant all such restoration work for a period of two years following completion and/or termination of the construction. Those Permittees performing annual work within the rights-of-way may provide an annual performance bond, in an amount approved by the City Engineer, at the beginning of each year to cover all

excavations. The purpose of this bond is to guarantee the removal of partially completed and/or nonconforming facilities and to fully restore the public right-of-way to the pre-construction condition. The City Engineer may use the funds from the performance bond to complete removal and fully restore the public right-of-way to its pre-construction condition if the Permittee fails to do so.

XX.XX.210 Insurance.

Unless otherwise provided in a master permit or construction permit, each Permittee must, as a condition of the master permit and construction permit, secure and maintain the following liability insurance policies insuring both the Permittee, its agents, representatives, employees, contractors or subcontractors, and the City and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as co-insureds against any claims which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Permittee under the permit(s):

(A) Comprehensive Commercial General Liability Insurance. Commercial General Liability Insurance on an "occurrence" basis including coverage for Premises and Operations Liability, Products and Completed Operations, Contractual Liability, Independent Contractors, Stop Gap/Employer's Liability, Broad Form Property Damage, Explosion, Collapse and Underground Hazards, and Personal Injury Liability. Such insurance will provide limits of not less than two million dollars ($2,000,000) per occurrence and ten million dollars ($10,000,000) in the aggregate. Coverage limits can be achieved with a combination of the primary and umbrella/excess policies. Products/Completed Operations Liability Insurance will be provided for a period of at least six years after completion and/or termination of construction. Any deductible or self-insured retention must be disclosed and is subject to approval of the City. The policy for the Permittee must include without limitation coverage for hazards commonly referred to as "XCU" and contain a severability of interests provision.

(B) Automobile Liability Insurance. A policy of Automobile Liability, including coverage for Permittee's owned, non-owned, leased or hired vehicles providing a minimum limit for Bodily Injury and Property Damage of five million dollars ($5,000,000) per combined single limit each accident. The limit can be achieved with a combination of the primary and umbrella/excess policies.

(C) Workers Compensation Insurance. Statutory Worker's Compensation and Employers Liability insurance as prescribed by applicable law.

(D) City as an Additional Insured on Policies. The Commercial General Liability and Automobile Liability and Umbrella/Excess Liability insurance policies required must name the City of Anacortes as an additional insured on a primary and non-contributory basis on Forms CG 20 26 and CG 20 37 or their equivalents for a public body. Carriers furnishing insurance are required to waive all rights of subrogation against the City. The Permittee must obtain the written agreement on the part of each insurance company to notify the City at least forty-five (45) days prior to cancellation or non-renewal of any such insurance, except ten (10) days' notice of cancellation due to non-payment of premium.

(E) Evidence of Insurance. With respect to each policy, Permittee must provide the City prior to commencement of the Work, proof that it has procured the requisite insurance, including copies of any applicable polices, declaration pages, and/or endorsements. PERMITTEE IS NOT ENTITLED TO COMMENCE WORK AUTHORIZED UNDER ITS PERMIT(S) UNTIL THE CITY HAS RECEIVED AND APPROVED THE CERTIFICATE OF INSURANCE.

(F) Errors and Omissions. Permittee must maintain throughout the period of the applicable permit and for a period of six (6) years thereafter, a standard professional errors and omissions insurance policy of a form and with an insurance company satisfactory to the City. Permittee's insurance policies must incorporate a provision requiring giving written notice to the City at least sixty (60) days prior to any cancellation, non-renewal or material modification of the policies. Permittee's professional errors and omissions insurance will be in the minimum amount of $1,000,000 including contractual liability, with all coverage retroactive to the earlier of the date of the applicable permit or the commencement of design services in relation to the permit(s).

(G) Compliance by contractors and subcontractors. Permittee is required to ensure that each of its contractors and subcontractors complies with all requirements in this Section; provided that Permittee must require its contractors and subcontractors to maintain commercially reasonable limits of insurance, given the contractor's and subcontractor's scope of work. Permittee must provide evidence of insurance of contractors and subcontractors upon request by the City.

(H) In addition, each such insurance policy must contain an endorsement which provides that the policy may not be cancelled, reduced in coverage, nor the intention not to renew be stated until 60 days after receipt by the City of a written notice to that effect. Within 30 days after receipt of such notice by the City, and in no event later than 15 days prior to the cancellation or nonrenewal, the Permittee must obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

XX.XX.220 Hold harmless/indemnity.

(A) The Permittee must, to the fullest extent permitted by law, indemnify, defend and hold harmless the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as co-insureds (collectively the "Indemnified Parties" or individually, each an "Indemnified Party"), from and against any and all claims, liability, penalties, fines, costs, damages, losses and causes of action, arising out of or resulting from, or alleged to arise out of, relate to, or to result from the performance or non-performance of any construction performed at the instance of Permittee, or performance or non-performance of any services performed at the instance of Permittee (hereinafter singularly and collectively referred to as "Indemnity Claims"), but only to the extent directly or indirectly caused by the negligence or willful misconduct of Permittee, its contractors, subcontractors or supplier of any tier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Permittee, at its sole expense, must promptly dispose of Indemnity Claims, defend all lawsuits and similar proceedings filed against an Indemnified Party on the account of Indemnity Claims, pay all awards and judgments rendered against an Indemnified Party in connection therewith, and reimburse each Indemnified Party for all reasonable expenses incurred by such Indemnified Party in connection with Indemnity Claims and lawsuits and arbitrations and similar proceedings including, but not limited to, attorneys' fees, expert witness fees, court costs, arbitration costs and all other reasonable costs (not limited to statutory costs).

(B) If Indemnity Claims are caused or alleged to be caused in part by any joint or concurrent negligent act (either active or passive) or omission by an Indemnified Party, Permittee will indemnify, defend and hold harmless such Indemnified Party, as provided above, from such Indemnity Claims to the extent such Indemnity Claims arise out of or result from the negligence or willful misconduct of Permittee or its contractors, subcontractors or suppliers of any tier, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, or anyone whose acts Permittee may be responsible or liable. In no event will Permittee be obligated to indemnify an Indemnified Party for Indemnity Claims which arise out of or result from the sole negligence of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party, excluding Permittee.

(C) In addition, the City may require that any person, public utility, or wireless carrier accepting such a master permit or construction permit provide the City with additional indemnification, such as an indemnification from a parent company.

(D) The indemnification provided for herein does not apply to injuries to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees.

(E) For the sole purpose of effecting the indemnification obligations herein, the Permittee, by accepting a master permit, specifically and expressly waives any immunity that may be granted it under any applicable Workers' Compensation Act, disability benefit acts or other employee benefit acts.

XX.XX.230 Inspections.

All work performed within public right-of-way is subject to periodic inspection by the Council to assure compliance with any conditions attached to the permit, the requirements of this chapter, and the requirements of any applicable City code or standard.

XX.XX.240 Revocation of master permits and construction permits.

(A) Following a notice of violation and opportunity to cure, the Council may revoke or suspend any approval issued under this chapter for cause, in accordance with existing tariff or applicable State law whenever:

(1) The work does not proceed in accordance with the plans as approved or the conditions of approval, is not in compliance with the requirements of this chapter, other City ordinances, resolutions, or State law;

(2) The service provider fails to provide adequate service or otherwise fails to comply with the terms of its master permit or construction permit;

(3) The service provider has made a misrepresentation of material fact in applying for such approval;

(4) The Council determines that inadequate measures are being taken to protect the public, adjoining property, public right-of-way, or wireless telecommunications, utility or other facilities in such public right-of-way, or that any excavation or fill endangers or will endanger the public, adjoining property, public right-of-way, or wireless telecommunications or utility facilities in such public right-of-way.

(B) Upon suspension or revocation of an approval under this chapter, all permit-related activities of the public right-of-way must cease, except as authorized or directed by the Council.

XX.XX.250 Correction and discontinuance of a Master Permit.

(A) Whenever the Council determines that any condition on any public right-of-way is in violation of a master permit or any other provision of this chapter related thereto, or exists without a master permit, the Council may order the correction or discontinuance of such condition or any activity causing such condition.

(B) The Council also has all powers and remedies available under State law and this chapter, to secure the correction or discontinuance of any condition specified in this section.

(C) The Council is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions or activities as it determines appropriate:

(1) Serving of oral or written directives to Permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;
(2) Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within thirty (30) days
(3) Service of a written notice to remove an object or facility within twenty-four (24) hours and summary removal if the object or thing is a hazard to public safety, with notice of such removal to the owner, if known;
(4) Revocation of previously granted master permit(s) where Permittee or other responsible person has failed or refused to comply with requirements imposed by the City related to such permits; or
(5) Issuance of an order to immediately stop work until authorization is received from the City to proceed.

(D) Any utility or wireless facility, or any other object or thing which occupies any public right-of-way without a master permit or or in violation of the master permit conditions is a nuisance both public and private.

(E) All expenses incurred by the Council, including attorney's fees and legal expenses, in abating the condition or any portion thereof constitutes a civil debt owing to the Council jointly and severally by such persons who have

been given notice or who own the object or thing or placed it in the public right-of-way, which debt is collectible in the same manner as any other civil debt.

XX.XX.260 Correction and discontinuance of a Construction Permit.

(A) Whenever the City Engineer determines that any condition on any public right-of-way is in violation of a construction permit or any other provision of this chapter related thereto, or exists without a construction permit, the City Engineer may order the correction or discontinuance of such condition or any activity causing such condition.

(B) The City Engineer also has all powers and remedies available under State law and this chapter, to secure the correction or discontinuance of any condition specified in this section.

(C) The City Engineer is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions or activities as it determines appropriate:

(1) Serving of oral or written directives to Permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;
(2) Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within thirty (30) days;
(3) Service of a written notice to remove an object or facility within twenty-four (24) hours and summary removal if the object or thing is a hazard to public safety, with notice of such removal to the owner, if known;
(4) Revocation of previously granted construction permit(s) where Permittee or other responsible person has failed or refused to comply with requirements imposed related to such permits; or
(5) Issuance of an order to immediately stop work until authorization is received from the City to proceed.

(D) Any utility or wireless facility, or any other object or thing which occupies any public right-of-way without a construction permit or or in violation of construction permit conditions is a nuisance both public and private.

(E) All expenses incurred by the City Engineer, including attorney's fees and legal expenses, in abating the condition or any portion thereof constitutes a civil debt owing to the City Engineer jointly and severally by such persons who have been given notice or who own the object or thing or placed it in the public right-of-way, which debt is collectible in the same manner as any other civil debt.

XX.XX.270 Removal.

Any person accepting a master permit or construction permit pursuant to this chapter for the installation of any utility or wireless carriers must remove such facilities when they are no longer required, or if the master or construction permit has been revoked as provided in this chapter. Such removal must occur within 90 days of receiving notice from the Council ordering such removal. Unless otherwise approved by the City in writing, no person is permitted to abandon utility or wireless facilities within a public right-of-way, and then only under such conditions as may be prescribed by the Council.

XX.XX.280 Displacement for public use.

(A) A wireless carrier, public utility, or other person under order of the Council must, upon a minimum 60 days' written notice, move or adjust its underground or overhead facilities located within the public right-of-way which interfere with any public improvement authorized or ordered by the City. The relocation must be done at the expense of the telecommunications carrier, public utility, or other person, subject to the exceptions in RCW 35.99.060(d) and existing tariffs, which may require the City to pay for displacement in certain circumstances. The actual number of days must be specified by the Council in the Council's order.

(B) When a public improvement is required to accommodate or allow development or other activity by a party other than the City, then a wireless telecommunications carrier, public utility or other person which moves or adjusts its facilities is entitled to recover its associated costs and expenses from such other party.

(C) Such persons must indemnify, hold harmless, and pay the costs of defending the City against claims or liabilities for delays on public improvement projects caused by their failure to relocate their facilities in a timely manner unless caused by circumstances beyond their control.

XX.XX.290 Additional ducts or conduits.

Any person constructing underground ducts or conduits pursuant to this chapter must, upon request, provide the City with additional ducts for its use. Such additional ducts or conduits must be of a size and configuration specified by the City and be dedicated to the City. The City has the right to use the ducts and conduits for any purpose, including but not limited to leasing them to other entities, subject to the following provisions.

(A) The City must enter into a contract with the service provider consistent with RCW 80.36.150, and the incremental costs of adding the ducts and conduits under this section will be borne by the City. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing wireless services for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, must recover at least the fully allocated costs of the service provider. The service provider must state both contract rates in the contract.

(B) Except as otherwise agreed by the City and the service provider, the City agrees that he requested additional duct or conduit space and related access structures will not be used by the City to provide wireless service for hire, sale, or resale to the general public.

(C) The City will not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.

(D) The value of the additional duct or conduit requested by the City will not be considered a public works construction contract.

(E) This section does not apply to the provision of an institutional network by a cable television provider under federal law.

XX.XX.300 Joint use of poles.

(A) All wireless support structures permitted pursuant to the terms of this chapter or otherwise located within the City of Anacortes must be made available for use by the owner or initial user thereof, together with as many other wireless service providers as can be technically collocated thereon.

(B) Nothing contained within this chapter prevents the owner of such poles from charging a reasonable pole attachment fee that does not exceed the fair market value for the space occupied by said collocated facilities; except that if the owner is the City, it may not charge more than the reasonable approximation of its reasonable costs.

XX.XX. 310 City use for noncommercial government communication.

Any person erecting or maintaining poles within public right-of-way allows the City the right, free of charge, to attach, maintain and operate traffic and traffic safety signals, as noncommercial governmental communication and signals, wires and/or fixtures within available surplus space on the poles erected and so maintained.

XX.XX.320 Appearance.

Any person erecting or maintaining poles under authority of this chapter must ensure that its poles are maintained in a manner that does not significantly distract from the visual appearance of the pole. Such maintenance may include cleaning, replacement, painting or repainting of the pole. Wooden utility poles are not required to be painted.

XX.XX.330 Moving of building(s) and/or equipment.

Any person maintaining overhead wireless or utility facilities in public right-of-way must, upon seven days' notice from the Council, disconnect or move said facilities to allow for the moving of building(s) and/or equipment across or along any such public right-of-way; provided, however, that the advance notice may be reduced to 24 hours if the facilities are below the minimum clearance set by law or regulation or in the case of an emergency. The cost of moving such facilities must be in accordance with existing tariffs or applicable State law, and borne as follows: (1) by the owner of the facilities if: (a) the wires, cables or appurtenances are below the minimum vertical clearance required by State law, City ordinance, or rules of the Council, (b) above the surface of the public right-of-way, or (c) no adjustment would be necessary if the minimum clearance had been maintained; or (2) by the person desiring to move the building(s) and/or equipment under all other circumstances.

XX.XX.340 Billings and collections.

The Council, jointly with the Finance Director, may establish procedures pertaining to the billing and collection of fees and charges adopted pursuant to this chapter.

XX.XX.350 Liability.

The Council and other employees charged with the enforcement and administration of this chapter, acting for the City in good faith and without malice in the discharge of their duties, do not thereby render themselves liable personally for damages that may accrue to persons or property as a result of an act required or by reason of an act or omission in the discharge of such duties.

XX.XX.360 Tree trimming.

Any wireless carrier or public utility required by State statute or regulation to trim or remove trees which may interfere with their facilities must ensure that their tree trimming activities protect the appearance, integrity and health of the trees to the extent reasonably possible. The wireless carrier or public utility must prepare and maintain a tree trimming schedule to ensure compliance with this provision and to avoid exigent circumstances where tree cutting, trimming or removal is necessary to protect the public safety or continuity of service without the regard for the appearance, integrity or health of the trees that planned maintenance would otherwise allow. The wireless carrier or public utility must submit the schedule to the City Engineer. Except where exigent circumstances do not permit, the wireless carrier or public utility must give the owner the property on which the trees are located at least five days' advance written notice of the tree trimming. Tree trimming on any City streets must comply with the standards developed by the City's street tree advisory committee.

XX.XX.370 Underground facilities.

(A) The undergrounding requirements of this section apply where the wireless telecommunications carrier, public utility, or other person's facilities consist of cable or any other facilities which are capable of being placed underground. This section does not apply to antennas or other facilities, which are required to remain above-ground, in order to be functional.

(B) In any area of the City in which there are no aerial facilities other than antennas or other facilities required to remain above-ground in order to be functional or otherwise for the provision of wireless services, or in any public right-of-way in which all wireless telecommunications wires and cables, and electric power wires, cables, 15,000 volts and lower, and other aerial facilities capable of undergrounding have been placed underground, no person is permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but must lay such wires, cables or other facilities underground in the manner required by the City pursuant to this section, and Chapters15.32 and 19.68 AMC, if applicable.

(C) If utility or street improvement projects are anticipated within the same public right-of-way within 12 months of a Permittee's proposed construction, the City may permit interim installation of above-ground facilities. In the event that the City does not require the undergrounding of such facilities at the time of initial installation, the City may, at any time in the future, require the conversion of such above-ground and/or aerial facilities to underground installation at the carrier, utility, or other person's expense, with exceptions as set forth in RCW 35.99.060(d).

(D) The City must allow new electric power lines and cables operating above 15,000 volts to be constructed above-ground when location within the City right-of-way is approved by the City Engineer.

(E) Whenever a service provider or public utility undertakes an undergrounding project in any area of the City, it must underground their above-ground facilities in the manner specified by the City, concurrently and together with the other affected carriers, utilities, and other persons in the affected area. The location of any such relocated and underground facilities must be approved by the Council. Such service provider must underground their facilities at no cost to the City, except as provided in RCW 35.99.060(d).

(F) In the event that the City undertakes any public improvement which would otherwise require, in the discretion of the Council, the relocation of carrier, utility, or other person's above-ground facilities, the Council may, by written notice to such persons, direct that any such facilities be converted to underground facilities. Any such conversion must be done subject to and in accordance with applicable schedules and tariffs on file with the WUTC or such other regulatory agency having jurisdiction.

XX.XX.380 Joint trenching.

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

(A) Such joint use may not unreasonably delay the work of the party causing the excavation to be made;

(B) Any party desiring to share in an excavation may be required to pay the fair and reasonable pro rata cost of said excavation. Such joint use must be arranged and accomplished on terms and conditions satisfactory to both parties; and

(C) Either party may deny such request for safety reasons.

XX.XX.390 Notice of tariff changes.

A Permittee must, when making application for any changes in tariffs affecting the provisions of this chapter or any approval issued hereunder, notify the City in writing of the application and provide the Council with a copy of the submitted application. The Permittees must further provide the Council with a copy of any actual approved tariff change affecting any approval issued pursuant to this chapter.

XX.XX.400 One-call locator.

All carriers, utilities, Permittees, and other persons must, before commencing any construction within a public right-of-way, comply with all of the requirements set forth in Chapter 19.122 RCW, the one-call locator service.

XX.XX.410 Violation – Penalties.

(A) No person may violate or fail to comply with this chapter.

(B) A violation of or failure to comply with any provision of this chapter is a civil infraction subject to the enforcement provisions of Chapter 1.24 AMC.

(C) A violation or failure to comply with any provision of this chapter, including any order of the Council authorized by this chapter, is, in addition to any other remedies, grounds for the Council to revoke the underlying permit issued to the Permittee, if any, and grounds for the denial of any additional permits under this chapter until the Permittee is in full compliance with the provisions of this chapter.

(D) Violation of a stop-work order issued pursuant to AMC XX.XX.250 or 260 constitutes a gross misdemeanor, punishable by not more than 90 days in jail and a fine not exceeding $1,000, or both.