

**PLEASE NOTE THIS CONTINUED PUBLIC HEARING
BEGINS AT 5 PM**

**CONTINUED PUBLIC HEARING
ANACORTES PLANNING COMMISSION**



WEDNESDAY, JANUARY 30, 2019

Municipal Building Council Chambers

6th Street and "Q" Avenue

AGENDA

5 P.M.

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1. **Roll Call**
2. **Continued Public Hearing**: Wireless Telecommunications Draft Regulations

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Planning Commission Agenda Bill

Meeting Date: 1/30/2019 **Agenda Item:** [Click here to enter text.](#)

Subject: Wireless Code Updates: Public Hearing

Staff Contact: Darcy Swetnam, Don Measamer

Approved for Submittal to PC by	
	Laurie Gere, Mayor
x	Don Measamer, PCED Director
	Darcy Swetnam, City Attorney

Action Type	
x	Public Hearing
	Staff Report
	Discussion

Summary Statement: The draft wireless service facilities and utility and telecommunication ROW use regulations have been revised based on additional public comment and feedback received at the January 16, 2019 public hearing. Upon closing the public hearing, staff recommends the Planning Commission make a motion to recommend approval of the draft regulations to City Council. A draft recommendation with findings of fact per AMC 19.16.080(C)(3) is forthcoming for the Planning Commission's review.

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.

Recommended Motion: I move to recommend to the City Council approval of draft AMC Ch. 19.68 Wireless Service Facilities and AMC 5.38 Public Utility and Telecommunications Right-of-Way Use.

Attachments:

- Revised DRAFT Ch. 19.68 Wireless Service Facilities
- Revised DRAFT Ch. 5.38 Public Utility and Telecommunications Right of Way Use

Chapter 19.68

WIRELESS SERVICE FACILITIES

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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 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” for the purposes of Eligible Facilities Requests 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) “Colocation” for the purpose of applications to site Small Wireless Facilities and other wireless facilities, excluding Eligible Facilities Requests, means

(a) Mounting or installing an antenna facility on a pre-existing structure, and/or

(b) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

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

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

(8) “Eligible Facilities Request” or “EFR”. Any request for modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station, involving:

(i) Colocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(9) “Eligible Support Structure.” Any tower or base station, provided that it exists at the time the relevant EFR application is filed with the state or local government.

(10) “Equipment Cabinet” means an enclosure that is mounted above base flood elevation or placed on a concrete slab that contains 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.

(11) “Equipment Shelter” means an enclosed structure, shed or box at the base of a mount to store 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.

(12) “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.

(13) “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.

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

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

(16) “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.

(17) “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.

(18) “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.

(19) “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.

(20) “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.

(21) “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,

(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, 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 Federal law;

(E) The facilities are not located on Tribal lands, means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; and

(F) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under Federal law pertaining to wireless facilities.

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

(23) “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.

(24) “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.

(25) “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.

(26) “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.

(27) “Utility pole” means a pole privately owned or installed by a utility company for the purpose of electrical transmission.

(28) “Wireless” means communications using radio frequency or optical emissions to complete one or more communications paths in whole or in part among originating and receiving points without other tangible physical connection, including without limitation, radio and unguided optical waves, and the apparatus used for such transmission.

(29) “Wireless support structure” means a freestanding structure that is designed to support or is capable of supporting wireless facilities. The term does not include a utility pole, monopole, street pole, or tower.

19.68.040 Permit required.

(A) New Facilities. A wireless service facility (WSF) permit or wireless 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 or conditional wireless use permit (WCUP) is required in every zone prior to the colocation of any wireless service facility and is required for modifications that qualify as a Substantial Change. Colocations involving modifications under subsection (C) below are exempt from this requirement.

(C) Non-Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that meets the criteria for a Non-Substantial Change as set forth in 19.68.060

must submit an Eligible Facility Request application. A WSF or WCUP will not be required for these types of modifications.

(D) Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that is a Substantial Change as defined in 19.68.050 is 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 WCUP must also meet the criteria for said use permits set forth in Section 19.68.130.

(F) A building permit is also required for any new wireless facility or collocating facility.

19.68.050 Substantial Change.

(A) "Substantial Change" 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 involves adding an appurtenance to the body of the tower that 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 other eligible support structures, 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 more than the standard number of new equipment cabinets, not to exceed four; 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 any eligible support structure, if the modification entails any excavation or deployment outside the current site;

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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 Change.

(A) “Non-substantial Change” 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 any eligible support structure, if the modification does not entail any excavation or deployment outside the current site

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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 Optional Pre-application.

An optional pre-application may be submitted up to thirty (30) days prior to the submission of an Eligible Facilities Request application, or a permit application associated with a Small Wireless Facility or other wireless facility. The information submitted along with a pre-application may include the following information:

(1) The name and address of the applicant;

- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (5) A stamped report by a state of Washington registered professional engineer demonstrating compliance with existing structural, electrical, and safety codes, and describing the general structural capacity of the eligible facility, small wireless facility, or other wireless facility.
- (6) Detailed site plan and drawings.
- (7) 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).
- (8) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure;
- (9) If new equipment cabinets, generators, or any other ground equipment components are being proposed, an assessment of noise that shows compliance with City and/or Federal noise standards.
- (10) A description of compliance with the applicable visibility and performance standards set forth in section 19.68.200.
- (11) A stamped report by a state of Washington registered professional engineer demonstrating compliance with radio-frequency emissions standards.

19.68.080 Eligible Facilities Request applications.

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

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act.
- (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (5) If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, the applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended with the modification. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
- (6) If the applicant proposes a modification to a tower, an attestation that the proposed modifications will comply with existing structural, electrical, and safety codes, and a description of the general structural capacity of the tower with the proposed modification.

(7) If the applicant proposes a modification to a base station, an attestation that the proposed modifications will comply with existing structural, electrical, and safety codes.

(8) If the applicant proposes a modification requiring alteration to the eligible support structure, excavation, installation of new equipment cabinets, or other activities impacting or altering the land, existing structures, fencing or landscaping, the applicant must submit a detailed site plan and drawings, showing the point of true north, and an appropriate scale depicting:

(i) the location, elevation, and dimensions of the existing eligible support structure;

(ii) the location, elevation, and dimensions of the existing transmission equipment;

(iii) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;

(iv) the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each;

(v) any proposed modification to the eligible support structure;

(vi) the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and

(vii) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

(9) If excavation or deployment is proposed outside the current site of the tower or base station, a description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions showing the tower or base station with respect to the site. The city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site.

(10) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

(11) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure;

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

(13) A stamped report by a state of Washington registered professional engineer demonstrating compliance with Federal radio-frequency emissions standards for wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the non-substantial change criteria. A waiver, to be effective, must be in writing and signed by the approval authority.

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

(D) 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.

19.68.090 Permit application – Small Wireless Facility.

(A) Application. A complete application for a wireless service facility permit or wireless conditional use permit must include the following information and materials on a form provided by the Director. Applications for Small Wireless Facilities may be submitted in batches of applications, which may encompass up to five separate applications filed at the same time, each for one or more sites, or a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications. For the purposes of this section, a complete application includes:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (4) An attestation that the Permittee will comply with existing structural, electrical, and safety codes, and a description of the general structural capacity of the new small wireless facility or the facility upon which the small wireless facility is to be colocated.
- (5) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:
 - (a) 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 wireless facilities, elevation drawings of the proposed tower and any other structures, topography of the site, and proposed parking;
 - (b) If the proposed Small Wireless Facility siting involves a colocation that will alter the exterior dimensions or appearance of an existing facility, applicant shall include a detailed visual simulation depicting how the existing facility will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended, if applicable. The visual simulation shall depict to scale the existing facility with any colocation in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
 - (c) Legal description of the parent tract and leased parcel (if applicable);
 - (d) If new equipment cabinets, generators, or any other ground equipment components are being proposed:
 - (i) an assessment of noise that shows compliance with City and/or Federal noise standards;
 - (ii) a description of the method of concealment of equipment components, such as: whether such components will be located 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; located underground; or within an equipment cabinet or shelter;
 - (iii) if equipment is proposed to be concealed within an equipment cabinet or shelter that will be located above ground, a description of the landscaping and screening, if technically feasible.
 - (e) Any engineering report(s) required to show feasibility of meeting the applicable criteria in this section as applicable;
- (6) A stamped report by a state of Washington registered professional engineer or an assessment demonstrating compliance with Federal radio-frequency emissions standards applicable to wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, would materially inhibit wireless service. A waiver, to be effective, must be in writing and signed by the approval authority.

(C) Fee. Every application for a small wireless service facility permit or wireless 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.

19.68.100 Permit application – all other Wireless Facilities.

(A) Application. A complete application for a wireless service facility permit or wireless conditional use permit for wireless facilities other than Small Wireless Facilities and Eligible Support Structures or EFRs must include the following information and materials on a form provided by the Director. For the purposes of this section, a complete application includes:

- (1) The name and address of the applicant;
 - (2) Identification of all carriers using the facility;
 - (3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
 - (4) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:
 - (a) 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;
 - (b) Legal description of the parent tract and leased parcel;
 - (c) A landscape plan showing specific landscape materials;
 - (d) Method of fencing, the finished color and/or the method of camouflage and illumination.
 - (5) A description of compliance with the additional requirements in this Chapter for collocating and/or for conditional uses, if applicable.
 - (6) If new equipment cabinets, generators, or any other ground equipment components are being proposed: (i) an assessment of noise that shows compliance with City and/or Federal noise standards.
 - (7) A stamped report by a state of Washington registered professional engineer demonstrating compliance with radio-frequency emissions standards as set forth in Section 19.68.240.
- (B) New facilities. In addition to the application materials delineated in subsection (A) above, an application for a new wireless facility must provide:
- (1) A notarized statement by the applicant as to whether construction of a new facility will accommodate collocating 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.

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

(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 wireless 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.

19.68.110 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.

(C) This permit approval process does not apply to Eligible Facility Requests.

19.68.120 Permit review – general criteria.

(A) In evaluating a permit application under this Chapter, the decision-maker 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 19.68.200;

(3) Whether the applicant has shown that its proposed facility meets any additional requirements in this Chapter for collocating and/or conditional uses, if applicable.

(B) For a new wireless facility or a new Small Wireless 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 decision-maker 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 administering 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.

19.68.130 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 compatibility of the proposed structure with the height and mass of existing buildings in the area.

(3) 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 19.68.200 which most closely match the proposed facility;

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

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

(6) 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.

19.68.140 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 decision-maker 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.

19.68.150 Timeframe for review.

The timeframe for review of an application for a wireless facility permit or wireless conditional use 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) days from receipt of submission of application	Written decision due within ninety (90) days from submission of application	Written decision due within one hundred and fifty (150) days from submission of application.	Written decision due within sixty (60) days from submission of application	Written decision due within ninety (90) days from submission of application.
Notes	If the City finds that the application involves a Substantial Change, the City may process the application as one for a new facility or deny the application.	This provision does not apply to Small Wireless Facilities.	This provision does not apply to Small Wireless Facilities.		

19.68.160 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 the City 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.

19.68.170 Appeals.

Appeals may be commenced on an action by the decision-maker on a permit application, within thirty (30) days of such act or failure to act, in any court of competent jurisdiction. This section supersedes the City's administrative appeal process set forth in Section 19.20.210.

19.68.180 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.

19.68.190 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. The zones referred to below are defined in the City’s general zoning code.

Type of Facility	Residential Zones (R1, R2, R2A, R3, R3A, R4, R4A, OT)	Mixed Use Zones (CBD, C, MMU, CM, CM2, P)	Industrial Zones (LM, LM1, MS, HM, I, AZ)
Monopole	Permitted with WCUP	Permitted with WSF, except permitted with WCUP in P and except not permitted in CBD	Permitted with WSF
Utility Poles	Permitted with WCUP	Permitted with WSF, except permitted with WCUP in P, and except not permitted in CBD	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	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 WCUP	Permitted with WSF	Permitted with WSF
Building Attached	Permitted with WSF, only on buildings with nonresidential uses, and except permitted with WCUP in OT	Permitted with WSF	Permitted with WSF
Stealth Support Structure	Permitted with WSF, except permitted with WCUP in OT	Permitted with WSF, except permitted with WCUP in P	Permitted with WSF
Small Wireless Facility	Permitted with WSF	Permitted with WSF	Permitted with WSF
Other Types Not Listed	Permitted with WCUP	Permitted with WCUP	Permitted with WCUP

19.68.200 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 (including Small Wireless Facilities)	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 and is centered on top of the support structure; or be placed pursuant to the City's adopted design standards, 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 is permitted when the City's adopted design 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 City's typical landscaping requirements. 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. These dimension limitations do not apply to Small Wireless Facilities. 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, if technically feasible. 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 the City and/or Federal noise regulations, 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 and/or equipment cabinets must be surrounded with a minimum of four feet wide landscaping, in the applicable zones set forth in the City's general zoning provisions, if technically feasible. 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, antennas, monopoles, and other wireless facilities and equipment pertaining thereto 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 City or Federal noise regulations, 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 their 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:

New Monopoles (including Small Wireless Facilities) and Stealth Wireless Support	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 has been designed in a manner that will allow for the colocation of at least one additional antenna array on the structure, if technically feasible.
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Structures	4. The height of the monopole may not exceed 120 feet or the height of similar structures permitted in the zone within which it is located, whichever is greater.
Colocating Monopoles or Utility Poles Within Public Rights-of-Way	1. More than one facility may be colocated on any monopole, subject to the permits and technical feasibility. 2. Monopoles 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 monopole 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 20 feet in the public right-of-way. 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 electric transmission tower) 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 playfield, ballfield, or stadium light. 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.
Building Attached	The equipment for roof-mounted antennas within the OT 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.

19.68.210 Requirements for colocations.

(A) All wireless facilities colocating within the City of Anacortes must meet the following standards. This section does not apply to Eligible Facilities Requests.

(B) Colocations (as defined in Section 19.68.030(5)) are permitted on existing monopoles and 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 vertical 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 30 feet to accommodate the minimum separation requirement. The height of the existing facility with all increases in height due to colocations may not exceed the general height limitation for similar structures or buildings within the zone in which it is permitted or 120 feet, whichever is greater.

(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 within the public right-of-way, or within 30 feet of the existing structure outside of the public right-of-way, and maintain the design of the original structure, including any stealth or camouflage components. To determine feasibility, the applicant must submit an engineer's report regarding the feasibility of a proposed replacement.

(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 19.68.200.

19.68.220 Requirements for Non-Substantial Changes.

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 City or Federal noise regulations. A noise study must be submitted with any modification to antennas or equipment.

(B) No modification may violate the Federal radio-frequency emission standards.

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

19.68.230 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.

19.68.240 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.

19.68.250 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).

19.68.260 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.

19.68.270 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.

19.68.280 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.

19.68.290 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.

19.68.300 SEPA.

Integration of environmental review. An application for a wireless service facility permit or wireless 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 5.38

PUBLIC UTILITY AND TELECOMMUNICATIONS

RIGHT-OF-WAY USE*

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5.38.010 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.

5.38.020 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.

5.38.030 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. A master permit does not include cable television franchises or permits.

(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 Federal regulations;

(E) The facilities are not located on Tribal lands, which means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; 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;

(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. The term does not include a utility pole, monopole, street pole, or tower.

(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.

5.38.040 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.

5.38.050 Optional pre-application.

An applicant may submit materials up to thirty (30) days in advance of an application for a construction permit or master permit. The information submitted along with a pre-application may include the following information:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) Preliminary engineering plans, specifications, and maps of the facilities to be located within the public right-of-way;
- (5) Detailed construction plans demonstrating compliance with all applicable City codes and construction specifications, including the City's Engineering Standards;
- (6) 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;
- (7) A brief description of non-confidential, nonproprietary transmission medium that will be used to offer or provide such services;
- (8) 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;
- (9) 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;
- (10) The area or areas of the City the applicant desires to serve and a schedule for building out (offering service to) the entire area covered by the master permit;
- (11) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements; and/or
- (12) 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.

5.38.060 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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
 - (12) 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.
 - (13) 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) Applications for Small Wireless Facilities may be submitted in batches, which may encompass up to five separate applications filed at the same time, each for one or more sites, or a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications.
- (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.

5.38.070 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 area encompassed by the master permit;
- (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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
- (10) 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) Applications for Small Wireless Facilities may be submitted in batches, which may encompass up to five separate applications filed at the same time, each for one or more sites, or a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications.

(E) 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.

5.38.080 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.

5.38.090 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	Written Decision due within 90 days.

	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
					she exceed the timeframes for review set forth in this table.	

5.38.100 Construction permit approval.

(1) The City Engineer shall review construction permits as follows:

Optional Pre-Application Meeting	Yes
Notice of Application	No
Comment Period	None
Recommendation By	None
Pre-Decision Open-Record Hearing	No
Closed-Record Decision Hearing	No
Decision By	City Engineer
Notice of Decision	No

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

(8) 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.

(9) 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.

5.38.110 Master permit approval.

(1) The City Council shall review the master permit application as follows:

Optional Pre-Application Meeting	Yes
Notice of Application	Yes
Comment Period	14 days
Recommendation By	None
Pre-Decision Open-Record Hearing	Yes, before City Council
Closed-Record Decision Hearing	No
Decision By	City Council
Notice of Decision	Yes

(2) 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.

(3) 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.

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

(5) 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 the right 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.

5.38.120 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.

5.38.130 Nondiscrimination.

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

5.38.140 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 the area covered by the master permit 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.

5.38.150 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.

5.38.160 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.

5.38.170 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.

5.38.180 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.

5.38.190 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.

5.38.200 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.

5.38.210 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.

5.38.220 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 policies, 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.

5.38.230 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.

5.38.240 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.

5.38.250 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.

5.38.260 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 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.

5.38.270 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 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.

5.38.280 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.

5.38.290 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.

5.38.300 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.

5.38.310 Joint use of poles.

(A) All wireless facilities 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.

5.38.320 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.

5.38.330 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.

5.38.340 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.

5.38.350 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.

5.38.360 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.

5.28.370 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.

5.38.380 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 Chapters 15.32 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.

5.38.390 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.

5.38.400 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.

5.38.410 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.

5.38.420 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.



Planning Commission Agenda Bill

Meeting Date: 1/30/2019 **Agenda Item:** [Click here to enter text.](#)

Subject: Wireless Code Updates: Public Hearing

Staff Contact: Darcy Swetnam, Don Measamer

Approved for Submittal to PC by	
	Laurie Gere, Mayor
x	Don Measamer, PCED Director
	Darcy Swetnam, City Attorney

Action Type	
x	Public Hearing
	Staff Report
	Discussion

Summary Statement: The draft wireless service facilities and utility and telecommunication ROW use regulations have been revised based on additional public comment and feedback received at the January 16, 2019 public hearing. Upon closing the public hearing, staff recommends the Planning Commission make a motion to recommend approval of the draft regulations to City Council. A draft recommendation with findings of fact per AMC 19.16.080(C)(3) is forthcoming for the Planning Commission's review.

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.

Recommended Motion: I move to recommend to the City Council approval of draft AMC Ch. 19.68 Wireless Service Facilities and AMC 5.38 Public Utility and Telecommunications Right-of-Way Use.

Attachments:

- Revised DRAFT Ch. 19.68 Wireless Service Facilities
- Revised DRAFT Ch. 5.38 Public Utility and Telecommunications Right of Way Use

Chapter 19.68

WIRELESS SERVICE FACILITIES

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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 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” for the purposes of Eligible Facilities Requests 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) “Colocation” for the purpose of applications to site Small Wireless Facilities and other wireless facilities, excluding Eligible Facilities Requests, means

(a) Mounting or installing an antenna facility on a pre-existing structure, and/or

(b) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

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

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

(8) “Eligible Facilities Request” or “EFR”. Any request for modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station, involving:

(i) Colocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(9) “Eligible Support Structure.” Any tower or base station, provided that it exists at the time the relevant EFR application is filed with the state or local government.

(10) “Equipment Cabinet” means an enclosure that is mounted above base flood elevation or placed on a concrete slab that contains 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.

(11) “Equipment Shelter” means an enclosed structure, shed or box at the base of a mount to store 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.

(12) “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.

(13) “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.

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

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

(16) “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.

(17) “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.

(18) “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.

(19) “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.

(20) “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.

(21) “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,

(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, 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 Federal law;

(E) The facilities are not located on Tribal lands, means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; and

(F) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under Federal law pertaining to wireless facilities.

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

(23) “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.

(24) “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.

(25) “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.

(26) “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.

(27) “Utility pole” means a pole privately owned or installed by a utility company for the purpose of electrical transmission.

(28) “Wireless” means communications using radio frequency or optical emissions to complete one or more communications paths in whole or in part among originating and receiving points without other tangible physical connection, including without limitation, radio and unguided optical waves, and the apparatus used for such transmission.

(29) “Wireless support structure” means a freestanding structure that is designed to support or is capable of supporting wireless facilities. The term does not include a utility pole, monopole, street pole, or tower.

19.68.040 Permit required.

(A) New Facilities. A wireless service facility (WSF) permit or wireless 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 or conditional wireless use permit (WCUP) is required in every zone prior to the colocation of any wireless service facility and is required for modifications that qualify as a Substantial Change. Colocations involving modifications under subsection (C) below are exempt from this requirement.

(C) Non-Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that meets the criteria for a Non-Substantial Change as set forth in 19.68.060

must submit an Eligible Facility Request application. A WSF or WCUP will not be required for these types of modifications.

(D) Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that is a Substantial Change as defined in 19.68.050 is 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 WCUP must also meet the criteria for said use permits set forth in Section 19.68.130.

(F) A building permit is also required for any new wireless facility or collocating facility.

19.68.050 Substantial Change.

(A) "Substantial Change" 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 involves adding an appurtenance to the body of the tower that 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 other eligible support structures, 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 more than the standard number of new equipment cabinets, not to exceed four; 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 any eligible support structure, if the modification entails any excavation or deployment outside the current site;

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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 Change.

(A) “Non-substantial Change” 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 any eligible support structure, if the modification does not entail any excavation or deployment outside the current site

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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 Optional Pre-application.

An optional pre-application may be submitted up to thirty (30) days prior to the submission of an Eligible Facilities Request application, or a permit application associated with a Small Wireless Facility or other wireless facility. The information submitted along with a pre-application may include the following information:

(1) The name and address of the applicant;

- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (5) A stamped report by a state of Washington registered professional engineer demonstrating compliance with existing structural, electrical, and safety codes, and describing the general structural capacity of the eligible facility, small wireless facility, or other wireless facility.
- (6) Detailed site plan and drawings.
- (7) 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).
- (8) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure;
- (9) If new equipment cabinets, generators, or any other ground equipment components are being proposed, an assessment of noise that shows compliance with City and/or Federal noise standards.
- (10) A description of compliance with the applicable visibility and performance standards set forth in section 19.68.200.
- (11) A stamped report by a state of Washington registered professional engineer demonstrating compliance with radio-frequency emissions standards.

19.68.080 Eligible Facilities Request applications.

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

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act.
- (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (5) If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, the applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended with the modification. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
- (6) If the applicant proposes a modification to a tower, an attestation that the proposed modifications will comply with existing structural, electrical, and safety codes, and a description of the general structural capacity of the tower with the proposed modification.

(7) If the applicant proposes a modification to a base station, an attestation that the proposed modifications will comply with existing structural, electrical, and safety codes.

(8) If the applicant proposes a modification requiring alteration to the eligible support structure, excavation, installation of new equipment cabinets, or other activities impacting or altering the land, existing structures, fencing or landscaping, the applicant must submit a detailed site plan and drawings, showing the point of true north, and an appropriate scale depicting:

(i) the location, elevation, and dimensions of the existing eligible support structure;

(ii) the location, elevation, and dimensions of the existing transmission equipment;

(iii) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;

(iv) the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each;

(v) any proposed modification to the eligible support structure;

(vi) the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and

(vii) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

(9) If excavation or deployment is proposed outside the current site of the tower or base station, a description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions showing the tower or base station with respect to the site. The city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site.

(10) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

(11) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure;

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

(13) A stamped report by a state of Washington registered professional engineer demonstrating compliance with Federal radio-frequency emissions standards for wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the non-substantial change criteria. A waiver, to be effective, must be in writing and signed by the approval authority.

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

(D) 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.

19.68.090 Permit application – Small Wireless Facility.

(A) Application. A complete application for a wireless service facility permit or wireless conditional use permit must include the following information and materials on a form provided by the Director. Applications for Small Wireless Facilities may be submitted in batches of applications, which may encompass up to five separate applications filed at the same time, each for one or more sites, or a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications. For the purposes of this section, a complete application includes:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (4) An attestation that the Permittee will comply with existing structural, electrical, and safety codes, and a description of the general structural capacity of the new small wireless facility or the facility upon which the small wireless facility is to be colocated.
- (5) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:
 - (a) 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 wireless facilities, elevation drawings of the proposed tower and any other structures, topography of the site, and proposed parking;
 - (b) If the proposed Small Wireless Facility siting involves a colocation that will alter the exterior dimensions or appearance of an existing facility, applicant shall include a detailed visual simulation depicting how the existing facility will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended, if applicable. The visual simulation shall depict to scale the existing facility with any colocation in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
 - (c) Legal description of the parent tract and leased parcel (if applicable);
 - (d) If new equipment cabinets, generators, or any other ground equipment components are being proposed:
 - (i) an assessment of noise that shows compliance with City and/or Federal noise standards;
 - (ii) a description of the method of concealment of equipment components, such as: whether such components will be located 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; located underground; or within an equipment cabinet or shelter;
 - (iii) if equipment is proposed to be concealed within an equipment cabinet or shelter that will be located above ground, a description of the landscaping and screening, if technically feasible.
 - (e) Any engineering report(s) required to show feasibility of meeting the applicable criteria in this section as applicable;
- (6) A stamped report by a state of Washington registered professional engineer or an assessment demonstrating compliance with Federal radio-frequency emissions standards applicable to wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, would materially inhibit wireless service. A waiver, to be effective, must be in writing and signed by the approval authority.

(C) Fee. Every application for a small wireless service facility permit or wireless 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.

19.68.100 Permit application – all other Wireless Facilities.

(A) Application. A complete application for a wireless service facility permit or wireless conditional use permit for wireless facilities other than Small Wireless Facilities and Eligible Support Structures or EFRs must include the following information and materials on a form provided by the Director. For the purposes of this section, a complete application includes:

- (1) The name and address of the applicant;
 - (2) Identification of all carriers using the facility;
 - (3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
 - (4) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:
 - (a) 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;
 - (b) Legal description of the parent tract and leased parcel;
 - (c) A landscape plan showing specific landscape materials;
 - (d) Method of fencing, the finished color and/or the method of camouflage and illumination.
 - (5) A description of compliance with the additional requirements in this Chapter for collocating and/or for conditional uses, if applicable.
 - (6) If new equipment cabinets, generators, or any other ground equipment components are being proposed: (i) an assessment of noise that shows compliance with City and/or Federal noise standards.
 - (7) A stamped report by a state of Washington registered professional engineer demonstrating compliance with radio-frequency emissions standards as set forth in Section 19.68.240.
- (B) New facilities. In addition to the application materials delineated in subsection (A) above, an application for a new wireless facility must provide:
- (1) A notarized statement by the applicant as to whether construction of a new facility will accommodate collocating 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.

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

(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 wireless 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.

19.68.110 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.

(C) This permit approval process does not apply to Eligible Facility Requests.

19.68.120 Permit review – general criteria.

(A) In evaluating a permit application under this Chapter, the decision-maker 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 19.68.200;

(3) Whether the applicant has shown that its proposed facility meets any additional requirements in this Chapter for collocating and/or conditional uses, if applicable.

(B) For a new wireless facility or a new Small Wireless 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 decision-maker 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.

19.68.130 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 compatibility of the proposed structure with the height and mass of existing buildings in the area.

(3) 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 19.68.200 which most closely match the proposed facility;

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

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

(6) 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.

19.68.140 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 decision-maker 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.

19.68.150 Timeframe for review.

The timeframe for review of an application for a wireless facility permit or wireless conditional use 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) days from receipt of submission of application	Written decision due within ninety (90) days from submission of application	Written decision due within one hundred and fifty (150) days from submission of application.	Written decision due within sixty (60) days from submission of application	Written decision due within ninety (90) days from submission of application.
Notes	If the City finds that the application involves a Substantial Change, the City may process the application as one for a new facility or deny the application.	This provision does not apply to Small Wireless Facilities.	This provision does not apply to Small Wireless Facilities.		

19.68.160 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 the City 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.

19.68.170 Appeals.

Appeals may be commenced on an action by the decision-maker on a permit application, within thirty (30) days of such act or failure to act, in any court of competent jurisdiction. This section supersedes the City's administrative appeal process set forth in Section 19.20.210.

19.68.180 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.

19.68.190 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. The zones referred to below are defined in the City’s general zoning code.

Type of Facility	Residential Zones (R1, R2, R2A, R3, R3A, R4, R4A, OT)	Mixed Use Zones (CBD, C, MMU, CM, CM2, P)	Industrial Zones (LM, LM1, MS, HM, I, AZ)
Monopole	Permitted with WCUP	Permitted with WSF, except permitted with WCUP in P and except not permitted in CBD	Permitted with WSF
Utility Poles	Permitted with WCUP	Permitted with WSF, except permitted with WCUP in P, and except not permitted in CBD	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	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 WCUP	Permitted with WSF	Permitted with WSF
Building Attached	Permitted with WSF, only on buildings with nonresidential uses, and except permitted with WCUP in OT	Permitted with WSF	Permitted with WSF
Stealth Support Structure	Permitted with WSF, except permitted with WCUP in OT	Permitted with WSF, except permitted with WCUP in P	Permitted with WSF
Small Wireless Facility	Permitted with WSF	Permitted with WSF	Permitted with WSF
Other Types Not Listed	Permitted with WCUP	Permitted with WCUP	Permitted with WCUP

19.68.200 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 (including Small Wireless Facilities)	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 and is centered on top of the support structure; or be placed pursuant to the City's adopted design standards, 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 is permitted when the City's adopted design 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 City's typical landscaping requirements. 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. These dimension limitations do not apply to Small Wireless Facilities. 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, if technically feasible. 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 the City and/or Federal noise regulations, 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 and/or equipment cabinets must be surrounded with a minimum of four feet wide landscaping, in the applicable zones set forth in the City's general zoning provisions, if technically feasible. 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, antennas, monopoles, and other wireless facilities and equipment pertaining thereto 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 City or Federal noise regulations, 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 their 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:

New Monopoles (including Small Wireless Facilities) and Stealth Wireless Support	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 has been designed in a manner that will allow for the colocation of at least one additional antenna array on the structure, if technically feasible.
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Structures	4. The height of the monopole may not exceed 120 feet or the height of similar structures permitted in the zone within which it is located, whichever is greater.
Colocating Monopoles or Utility Poles Within Public Rights-of-Way	1. More than one facility may be colocated on any monopole, subject to the permits and technical feasibility. 2. Monopoles 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 monopole 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 20 feet in the public right-of-way. 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 electric transmission tower) 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 playfield, ballfield, or stadium light. 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.
Building Attached	The equipment for roof-mounted antennas within the OT 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.

19.68.210 Requirements for colocations.

(A) All wireless facilities colocating within the City of Anacortes must meet the following standards. This section does not apply to Eligible Facilities Requests.

(B) Colocations (as defined in Section 19.68.030(5)) are permitted on existing monopoles and 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 vertical 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 30 feet to accommodate the minimum separation requirement. The height of the existing facility with all increases in height due to colocations may not exceed the general height limitation for similar structures or buildings within the zone in which it is permitted or 120 feet, whichever is greater.

(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 within the public right-of-way, or within 30 feet of the existing structure outside of the public right-of-way, and maintain the design of the original structure, including any stealth or camouflage components. To determine feasibility, the applicant must submit an engineer's report regarding the feasibility of a proposed replacement.

(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 19.68.200.

19.68.220 Requirements for Non-Substantial Changes.

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 City or Federal noise regulations. A noise study must be submitted with any modification to antennas or equipment.

(B) No modification may violate the Federal radio-frequency emission standards.

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

19.68.230 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.

19.68.240 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.

19.68.250 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).

19.68.260 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.

19.68.270 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.

19.68.280 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.

19.68.290 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.

19.68.300 SEPA.

Integration of environmental review. An application for a wireless service facility permit or wireless 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 5.38

PUBLIC UTILITY AND TELECOMMUNICATIONS

RIGHT-OF-WAY USE*

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5.38.010 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.

5.38.020 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.

5.38.030 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. A master permit does not include cable television franchises or permits.

(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 Federal regulations;

(E) The facilities are not located on Tribal lands, which means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; 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;

(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. The term does not include a utility pole, monopole, street pole, or tower.

(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.

5.38.040 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.

5.38.050 Optional pre-application.

An applicant may submit materials up to thirty (30) days in advance of an application for a construction permit or master permit. The information submitted along with a pre-application may include the following information:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) Preliminary engineering plans, specifications, and maps of the facilities to be located within the public right-of-way;
- (5) Detailed construction plans demonstrating compliance with all applicable City codes and construction specifications, including the City's Engineering Standards;
- (6) 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;
- (7) A brief description of non-confidential, nonproprietary transmission medium that will be used to offer or provide such services;
- (8) 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;
- (9) 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;
- (10) The area or areas of the City the applicant desires to serve and a schedule for building out (offering service to) the entire area covered by the master permit;
- (11) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements; and/or
- (12) 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.

5.38.060 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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
 - (12) 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.
 - (13) 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) Applications for Small Wireless Facilities may be submitted in batches, which may encompass up to five separate applications filed at the same time, each for one or more sites, or a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications.
- (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.

5.38.070 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 area encompassed by the master permit;
- (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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
- (10) 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) Applications for Small Wireless Facilities may be submitted in batches, which may encompass up to five separate applications filed at the same time, each for one or more sites, or a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications.

(E) 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.

5.38.080 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.

5.38.090 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	Written Decision due within 90 days.

	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
					she exceed the timeframes for review set forth in this table.	

5.38.100 Construction permit approval.

(1) The City Engineer shall review construction permits as follows:

Optional Pre-Application Meeting	Yes
Notice of Application	No
Comment Period	None
Recommendation By	None
Pre-Decision Open-Record Hearing	No
Closed-Record Decision Hearing	No
Decision By	City Engineer
Notice of Decision	No

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

(8) 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.

(9) 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.

5.38.110 Master permit approval.

(1) The City Council shall review the master permit application as follows:

Optional Pre-Application Meeting	Yes
Notice of Application	Yes
Comment Period	14 days
Recommendation By	None
Pre-Decision Open-Record Hearing	Yes, before City Council
Closed-Record Decision Hearing	No
Decision By	City Council
Notice of Decision	Yes

(2) 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.

(3) 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.

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

(5) 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 the right 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.

5.38.120 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.

5.38.130 Nondiscrimination.

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

5.38.140 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 the area covered by the master permit 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.

5.38.150 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.

5.38.160 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.

5.38.170 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.

5.38.180 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.

5.38.190 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.

5.38.200 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.

5.38.210 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.

5.38.220 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 policies, 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.

5.38.230 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.

5.38.240 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.

5.38.250 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.

5.38.260 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 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.

5.38.270 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 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.

5.38.280 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.

5.38.290 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.

5.38.300 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.

5.38.310 Joint use of poles.

(A) All wireless facilities 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.

5.38.320 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.

5.38.330 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.

5.38.340 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.

5.38.350 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.

5.38.360 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.

5.28.370 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.

5.38.380 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 Chapters 15.32 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.

5.38.390 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.

5.38.400 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.

5.38.410 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.

5.38.420 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.



Anacortes Planning Commission Recorded Motion Regarding Amendments to the Wireless Service Facilities and Public Utility & Telecommunications Right-Of-Way Use Regulations

Proposal name:	Amendments to regulations governing Wireless Service Facilities and Public Utility & Telecommunications Right Of Way Use
File Number:	PLN-2018-0004
Documents available at:	https://www.anacorteswa.gov/1022/Wireless-Code-Update
Public hearing body:	Anacortes Planning Commission
Public hearing date:	January 16, 2019 & January 30, 2019
PC deliberations:	January 30, 2019

After considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, reasons for action, and recommendations to the Anacortes City Council.

Findings of Fact and Reasons for Action

1. There have been recent changes to the mandates of the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, and other applicable federal and state laws and rules promulgated by the Federal Communication Commission that require the City of Anacortes to update its wireless service facilities regulations.
2. The Federal Communications Commission (FCC) recently issued a *Declaratory Ruling and Third Report and Order*, FCC 18-133 ("Order FCC 18-133"), with the intent to streamline the deployment of Fourth Generation (4G) and Fifth Generation (5G) mobile communication system infrastructure, including small cell facilities, across the country.
3. The City's existing regulations governing "wireless telecommunications towers and antennas" in Chapter 17.63 Anacortes Municipal Code (AMC) and those governing franchise agreements for use of public rights-of-way are out of date as they relate to "small cell" technology and federal regulations.
4. The Anacortes City Council adopted Ordinance 3010 on August 28, 2017 establishing a moratorium on the receipt and processing of applications to site wireless communications towers and antennas pursuant to AMC Ch. 17.63, and on the receipt

and processing of applications for telecommunications franchises or master permits pursuant to AMC Ch. 5.36. The moratorium was extended by Ordinance 3020, adopted on February 20, 2018, and Ordinance 3027, adopted on August 27, 2018.

5. It is necessary and beneficial for the health, safety and welfare of the community to update the regulations for siting of wireless services facilities, including requirements for siting in the public right-of-way.
6. It is important to accommodate the growing need and demand for wireless services while protecting the character of the City of Anacortes and its neighborhoods.
7. On February 1, 2018, City staff hosted a meeting with wireless industry stakeholders and members of the public to obtain input on potential updates to the wireless service facilities regulations.
8. On December 19, 2018, a notice of public meeting and public hearing was printed in the Anacortes American.
9. On January 3, 2019, Planning Commission hosted a special meeting with wireless industry stakeholders and members of the public to obtain feedback on proposed draft amendments to the wireless service facilities regulations, establishing AMC Chapter 19.68 Wireless Service Facilities and AMC Chapter 5.38 Public Utility and Telecommunications Right-Of-Way Use.
10. SEPA environmental review of the draft amendments was completed and a Determination of Nonsignificance (DNS) issued on January 9, 2019. The comment period for the threshold determination ended on January 23, 2019.
11. The City notified the State of Washington of its intent to adopt amendments to its development regulations on January 9, 2019. The expedited review was complete on January 24, 2019, and no comments from state agencies were received.
12. The Planning Commission held a public hearing to take oral and/or written comments on the proposed amendments on January 16, 2019 and January 30, 2019.
13. The Planning Commission considered public testimony and written comments received during the comment period. Concerns were expressed regarding the definition "colocation" in the context of Small Wireless facilities. The definitions were revised to include a definition consistent with Order FCC 18-133. Concerns were also expressed regarding the ability of the City to meet the shot-clock requirements given the permit process for Small Wireless Facilities both in the Telecommunications and Right-of-Way code sections. In response to these concerns, the Planning Commission amended its code provisions to ensure a more streamlined review in both sections for Small Wireless Facilities. Concerns were also expressed regarding the applicability of certain aesthetic requirements to Small Wireless Facilities. The Planning Commission addressed such concerns by applying only those aesthetic criteria that are technically feasible to Small Wireless Facilities. The Planning Commission disagreed based on a legal analysis of Order FCC 18-133 that no aesthetic criteria should apply to Small Wireless Facilities. The Planning Commission also addressed concerns regarding the requirement of an

engineering report to show the capacity of a Small Wireless Facility. The Planning Commission changed this provision to require instead a description of the capacity. The Planning Commission also heard comments regarding the requirements pertaining to eligible facilities requests, and disagreed that the requirements were too onerous in light of the Middle Class Tax Relief and Job Creation Act of 2012.

14. The Planning Commission considered all other relevant matters including staff recommendations and analysis, legal advice, and consistency with the Anacortes Comprehensive Plan, including the following applicable policies:

Policy U-1.1. *Work with utility providers to ensure that reliable, quality services are provided at reasonable, equitable rates in all areas of the city.*

Policy U-1.2. *Support the timely expansion and maintenance of utility infrastructure in order to meet the evolving needs of the community.*

Policy U-1.3. *Encourage the use of new technologies that will enhance the quality of services and that are financially feasible.*

Policy U-2.6. *Encourage the joint use of utility corridors and facilities, provided that such use is consistent with limitations as may be prescribed by applicable law and prudent utility practice, in order to pool utilities to ensure utility needs are appropriately considered and to facilitate coordination of trenching activities.*

Policy U-3.1. *Minimize impacts to the community associated with construction, operation and maintenance activities of utility providers, such as loud noises, service outages, transportation disruptions and public safety hazards.*

Policy U-3.3. *Minimize visual impacts to the community associated with the siting and design of utility infrastructure, for instance by regulating light and glare, screening and landscaping, and location of above-ground facilities.*

In addition, in its siting provisions, the City took into account the land use designations specified in Table LU-1.

Conclusion

Based upon a review of the public testimony, input from wireless industry stakeholders, the staff recommendations and analysis, and legal advice, the Planning Commission finds that the proposed amendments establishing AMC Chapter 19.68 Wireless Service Facilities and AMC Chapter 5.38 Public Utility and Telecommunications Right-Of-Way Use comply with the federal and state regulations pertaining to wireless facilities and small cell facilities. In addition, upon review of the Anacortes Comprehensive Plan, including the above listed policies, the Planning Commission finds that the amendments meet the City of Anacortes' local regulations and policies.

Recommendation

The Planning Commission recommends that the City Council adopt the proposed amendments establishing AMC Chapter 19.68 Wireless Service Facilities and AMC Chapter 5.38 Public Utility and Telecommunications Right-Of-Way Use.

This recorded motion approved January 30, 2019:

Commission Vote	Support	Oppose	Absent	Abstain
Jeremy McNett, Chair				
Amber Moffitt				
Christine Cleland-McGrath, Vice Chair				
Jeff Mount				
Andrea Doll				
Jeff Graf				
Ward MacKenzie				
Total				

ANACORTES PLANNING COMMISSION
ANACORTES, WASHINGTON

Jeremy McNett, Planning Commission Chair

Date

From: [Swetnam, Darcy](#)
To: [Grage, Libby](#)
Subject: FW: Anacortes Wireless Update - Verizon Redlines
Date: Tuesday, January 8, 2019 1:17:26 PM

From: Vaga, Lelah H <lelah.vaga@verizonwireless.com>
Sent: Friday, January 4, 2019 3:42 PM
To: Swetnam, Darcy <darcys@cityofanacortes.org>
Cc: Devendra Maharaj <devendra.maharaj@verizonwireless.com>; Kim Allen <kim.allen@wirelesspolicy.com>
Subject: Fwd: Anacortes Wireless Update - Verizon Redlines

for some reason, this did not go out on my first attempt. Here it is again.

Hello Darcy - Thank you for the opportunity to address the planning commission yesterday. As requested, I am including our detailed redline of the proposed code here. The draft code moves generally in the right direction but has some technical and structural challenges for small wireless facilities that we would like to have an opportunity to discuss in detail with staff prior to the public meeting on 1/16/2019. We have found that more informal meetings with city staff, wireless industry representatives, and representatives of the local utilities can often help when resolving these issues. If you are interested in coordinating a meeting of that nature, we would be happy to assist.

The primary concerns that we have with the code are as follows:

- Sections 19.68.030-080--The code uses the Eligible Facilities Request process for the permitting of Small Wireless Facilities in the ROW, even though the federal rules and definitions are very different for these two types of wireless facilities. We would like to meet with staff and the consultants to propose separating the processes, standards, and submittal requirements for EFR's, SWF's and macros. Each type of facility has different aesthetic impacts and should be addressed separately to avoid confusion.
- We propose a definition of collocation that addresses the fact that there are different federal definitions of collocation for SWF's and EFR's.
- Sections 19.68.060-070--We suggest using the substantial change language from the Code of Federal Regulations for definitions and processes for EFR's.
- Section 19.68.080--Some of the submittal requirements like landscape plans and fencing plans do not work with SWF's in the ROW, which is why we would like to put these facilities in a separate section.
- Section 19.68.170-- We are concerned that the CUP process is required for some SWF's, which would make approval within the 60/90 day shot clocks from the recent FCC Order very problematic. Suggest administrative review for all SWF applications in all zones.
- Section 19.68.180-The limitation on equipment cabinet size to 5 CF with no side longer than 3 feet is unworkable and does not align with the FCC Order allowing a maximum of 28 cubic feet on the pole.

- The new chapter on Master Permit/Construction permit applications requires city council approval, which is not logistically feasible within the 60/90 day shot clocks. Suggest making these all administrative processes.
- With the holidays ensuing since we received the draft code, there has not been an opportunity to have internal risk management comment on the insurance and indemnity provisions proposed. Verizon will propose a self-insurance option.
- We understand that updates to the wireless code involve a lot of technical detail to make the code work for providers and the city. The goal is to work in partnership to develop a durable and efficient process to bring the enhanced service and coverage your residents and businesses need, while retaining the community's aesthetic values.

You had also asked about cities that have recently passed codes that work well. There has been a great deal of activity. As I had mentioned yesterday, Ogden Murphy Wallace has been leading the effort in many cities in Washington with regard to Wireless Codes. They were the lead firm in the Consortium of Washington Cities that formed a few years ago to research Small Cell wireless. Elana Zana and Scott Snyder lead those efforts and both are wonderful resources for more information. As to specific jurisdictions that have recently passed codes, Kennewick comes to mind as the most recent code passed to my knowledge, and as one of the few that are fully compliant with the most recent FCC order. Federal Way also passed an updated code this week, but it is an interim ordinance. Mount Lake Terrace is working through a code change process now for their permanent wireless code, and the drafts of that code that we have reviewed are also fully compliant with the current Federal Law.

Please let me know if we can be of any further assistance.

Lelah Vaga

Senior Manager of Municipal Engagement

Verizon Wireless

Mobile: 206-406-1294

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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 Change.
- 19.68.060 Non-substantial Change.
- 19.68.070 Optional Pre-application.
- 19.68.080 Eligible Facility Request application.
- 19.68.090 Permit application - Small Wireless Facility.
- 19.68.100 Permit application – All other Wireless Facilities.
- 19.68.110 Permit approval process.
- 19.68.120 Permit review – general criteria.
- 19.68.130 Permit review – additional criteria for conditional uses.
- 19.68.140 Completeness Review.
- 19.68.150 Timeframe for Review.
- 19.68.160 Construction.
- 19.68.170 Appeals
- 19.68.180 Prohibited locations
- 19.68.190 Permitted locations.
- 19.68.200 Visibility and performance Standards
- 19.68.210 Colocation standards
- 19.68.220 Requirements for non-Substantial Modifications.
- 19.68.230 Maintenance of facilities.
- 19.68.240 Testing of facilities required – Radio-frequency (RF) emissions.
- 19.68.250 Testing of facilities required – Noise emissions.
- 19.68.260 Security fencing.
- 19.68.270 Abandonment of facilities.
- 19.68.280 Signs.
- 19.68.290 Lighting standards.
- 19.68.300 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;

The Anacortes Municipal Code is current through Ordinance____and legislation passed through_____[Date].

- (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 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" for the purposes of Eligible Facilities Requests 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) ~~"Colocation"~~ for the purpose of applications to site Small Wireless Facilities and other wireless facilities, excluding Eligible Facilities Requests, means the mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup power) on buildings, towers or other non-tower structures, ~~where there is an existing antenna on the building or structure, and where~~ One of the following criteria is met:

Commented [KA1]: The deleted language is inconsistent with the definition of colocation in the FCC Order, Para. 140.

~~(A) Non-Visible Antennas. The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;~~

~~(B) Visible Replacement Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that~~

~~(1) It is a replacement for a pre-existing antenna;~~

~~(2) The new antenna will be located in the same vicinity as the pre-existing antenna;~~

~~(3) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna;~~

~~(4) The new antenna is not more than 3 feet larger in height or width (including all protuberances) than the pre-existing antenna; and~~

~~(5) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or~~

~~(C) Other Visible Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that~~

~~(1) It is located in the same vicinity as a pre-existing antenna;~~

~~(2) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna;~~

~~(3) The pre-existing antenna was not deployed pursuant to the exclusion in this paragraph;~~

~~(4) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna; and~~

~~(5) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;~~

~~(iii) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;~~

~~(iv) The deployment of the new antenna involves no new ground disturbance; and~~

~~(v) The deployment would otherwise require the preparation of an Environmental Assessment under Federal law solely because of the age of the structure.~~

(6) "Director" means the Director of Planning, Community, and Economic Development.

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

(8) "Eligible Facilities Request" or "EFR". Any request for modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station, involving:

(i) Colocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(9) "Eligible Support Structure." Any tower or base station, provided that it exists at the time the relevant EFR application is filed with the state or local government.

(10) "Equipment Cabinet" means an enclosure that is mounted above base flood elevation or placed on a concrete slab that contains 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.

(11) "Equipment Shelter" means an enclosed structure, shed or box at the base of a mount to store 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.

(12) "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.

(13) "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.

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

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

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

(21) "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,
- (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, 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 Federal law;

(E) The facilities are not located on Tribal lands, means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; and

(F) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under Federal law pertaining to wireless facilities.

(22) "Stealththing" means designing facilities to be architecturally incorporated into the surrounding community's environs while minimizing aesthetic impacts. Examples of stealththing include, but are not limited to, steeples, windmills, water towers, flag poles, light poles, or chimneys.

(23) Substantial Change" means a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater;

For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;

It entails any excavation or deployment outside the current site;

It would defeat the concealment elements of the eligible support structure; or

It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in subsections (g)(i) through (iv) of this section.

(24) "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.

(25) "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,

The Anacortes Municipal Code is current through Ordinance____and legislation passed through_____[Date].

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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.

- (26) "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.
- (27) "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.
- (28) "Utility pole" means a pole privately owned or installed by a utility company for the purpose of electrical transmission.
- (29) "Wireless" means communications using radio frequency or optical emissions to complete one or more communications paths in whole or in part among originating and receiving points without other tangible physical connection, including without limitation, radio and unguided optical waves, and the apparatus used for such transmission.
- (30) "Wireless support structure" means a freestanding structure that is designed to support or is capable of supporting wireless facilities. The term does not include a utility pole, monopole, street pole, or tower.

19.68.040 Permit required.

(A) New Facilities. A wireless service facility (WSF) permit or wireless 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 or conditional wireless use permit (WCUP) is required in every zone prior to the colocation of any wireless service facility and is required for modifications that qualify as a Substantial Change. Colocations involving modifications under subsection (C) below are exempt from this requirement.

(C) Non-Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that meets the criteria for a Non-Substantial Change as set forth in 19.68.060 must submit an Eligible Facility Request application. A WSF or WCUP will not be required for these types of modifications.

(D) Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that is a Substantial Modification as defined in 19.68.050 is 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 WCUP must also meet the criteria for said use permits set forth in Section 19.68.130.

19.68.050. Substantial Change.

Commented [KA2]: Moved to definitions.

(A) "Substantial Change" 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 involves adding an appurtenance to the body of the tower that 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 other eligible support structures, 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 more than the standard number of new equipment cabinets, not to exceed four; 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 any eligible support structure, if the modification entails any excavation or deployment outside the current site;

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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 Change.

Commented [KA3]: Covered by definitions.

(A) “Non-substantial Change” 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 any eligible support structure, if the modification does not entail any excavation or deployment outside the current site

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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. Optional Pre-application.

An optional pre-application may be submitted up to thirty (30) days prior to the submission of an Eligible Facilities Request application, or a permit application associated with a Small Wireless Facility or other wireless facility. The information submitted along with a pre-application may include the following information:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (5) A stamped report by a state of Washington registered professional engineer demonstrating compliance with existing structural, electrical, and safety codes, and describing the general structural capacity of the eligible facility, small wireless facility, or other wireless facility.
- (6) Detailed site plan and drawings.
- (7) 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).
- (8) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure;
- (9) If new equipment cabinets, generators, or any other ground equipment components are being proposed, an assessment of noise that shows compliance with City and/or Federal noise standards.
- (10) A description of compliance with the applicable visibility and performance standards set forth in section 19.68.200.
- (11) A stamped report by a state of Washington registered professional engineer demonstrating compliance with radio-frequency emissions standards.

19.68.080. Eligible Facilities Request applications.

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

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act.
- (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.

(5) If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, the applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended with the modification. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

(6) If the applicant proposes a modification to a tower, a stamped report by a state of Washington registered professional engineer demonstrating that the proposed modifications will comply with existing structural, electrical, and safety codes, and describing the general structural capacity of the tower with the proposed modification.

(7) If the applicant proposes a modification to a base station, a stamped report by a state of Washington registered professional engineer demonstrating that the proposed modifications will comply with existing structural, electrical, and safety codes.

(8) If the applicant proposes a modification requiring alteration to the eligible support structure, excavation, installation of new equipment cabinets, or other activities impacting or altering the land, existing structures, fencing or landscaping, the applicant must submit a detailed site plan and drawings, showing the point of true north, and an appropriate scale depicting:

- (i) the location, elevation, and dimensions of the existing eligible support structure;
- (ii) the location, elevation, and dimensions of the existing transmission equipment;
- (iii) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;
- (iv) the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each;
- (v) any proposed modification to the eligible support structure;
- (vi) the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
- (vii) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

(9) If excavation or deployment is proposed outside the current site of the tower or base station, a description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions showing the tower or base station with respect to the site. The city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site.

(10) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

(11) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure;

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

(13) A stamped report by a state of Washington registered professional engineer demonstrating compliance with Federal radio-frequency emissions standards for wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the substantial change criteria. A waiver, to be effective, must be in writing and signed by the approval authority.

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

(D) 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.

19.68.090 Permit application – Small Wireless Facility.

(A) Application. A complete application for a wireless service facility permit or ~~wireless conditional use permit~~ must include the following information and materials on a form provided by the Director. Applications for Small Wireless Facilities may be submitted in batches of applications, which may encompass up to five separate applications filed at the same time, each for one or more sites, *or* a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications. For the purposes of this section, a complete application includes:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (4) A stamped report by a state of Washington registered professional engineer demonstrating compliance with existing structural, electrical, and safety codes, and describing the general structural capacity of the new small wireless facility or the facility upon which the small wireless facility is to be colocated.
- (5) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:
 - (a) 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 wireless facilities, elevation drawings of the proposed tower and any other structures, topography of the site, and proposed parking;
 - (b) If the proposed Small Wireless Facility siting involves a colocation that will alter the exterior dimensions or appearance of an existing facility, applicant shall include a detailed visual simulation depicting how the existing facility will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended, if applicable. The visual simulation shall depict to scale the existing facility with any colocation in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
 - (c) Legal description of the parent tract and leased parcel (if applicable);
 - (d) If new equipment cabinets, generators, or any other ground equipment components are being proposed:
 - (i) an assessment of noise that shows compliance with City and/or Federal noise standards;
 - (ii) a description of the method of concealment of equipment components, such as: whether such components will be located 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; located underground; or within an equipment cabinet or shelter;
 - (iii) if equipment is proposed to be concealed within an equipment cabinet or shelter that will be located above ground, a description of the landscaping and screening.

Commented [KA4]: The permits for a small wireless facility must be processed in 60 days for a colocation and 90 days for a new pole, including appeals. There is insufficient time for a conditional use permit process which requires notice and hearing.

(e) Any engineering report(s) required to show feasibility of meeting the applicable criteria in this section as applicable;

(6) A stamped report by a state of Washington registered professional engineer or an assessment demonstrating compliance with Federal radio-frequency emissions standards applicable to wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, would materially inhibit wireless service. A waiver, to be effective, must be in writing and signed by the approval authority.

(C) Fee. Every application for a small wireless service facility permit or wireless 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.

19.68.100 Permit application – all other Wireless Facilities.

(A) Application. A complete application for a wireless service facility permit or wireless conditional use permit for wireless facilities other than Small Wireless Facilities and Eligible Support Structures or EFRs must include the following information and materials on a form provided by the Director. For the purposes of this section, a complete application includes:

(1) The name and address of the applicant;

(2) Identification of all carriers using the facility;

(3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.

(4) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:

(a) 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;

(b) Legal description of the parent tract and leased parcel;

(c) A landscape plan showing specific landscape materials;

(d) Method of fencing, the finished color and/or the method of camouflage and illumination.

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

(6) If new equipment cabinets, generators, or any other ground equipment components are being proposed:(i) an assessment of noise that shows compliance with City and/or Federal noise standards.

(7) A stamped report by a state of Washington registered professional engineer demonstrating compliance with radio-frequency emissions standards as set forth in Section 19.68.240.

(B) New facilities. In addition to the application materials delineated in subsection (A) above, an application for a new wireless 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.

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

(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 wireless 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.

19.68.110 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.

(C) This permit approval process does not apply to Eligible Facility Requests.

19.68.120 Permit review - general criteria.

(A) In evaluating a permit application under this Chapter, the decision-maker 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 19.68.200;

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

~~(B) For a new wireless facility or a new Small Wireless 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 decision-maker 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

Commented [KA5]: The FCC Order, which took effect 1/14/2019, specifically provides at Paras. 35-37 that a demonstration of need is not required.

on file and reviewed annually by the administering 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.

19.68.130 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 compatibility of the proposed structure with the height and mass of existing buildings in the area.

(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 19.68.200 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.

19.68.140 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 decision-maker 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.

19.68.150 Timeframe for review.

The timeframe for review of an application for a wireless facility permit or wireless conditional use 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) days from receipt of submission of application	Written decision due within ninety (90) days from submission of application	Written decision due within one hundred and fifty (150) days from submission of application.	Written decision due within sixty (60) days from submission of application	Written decision due within ninety (90) days from submission of application.
Notes	If the City finds that the application involves a Substantial Change, the City may process the application as one for a new facility or deny the application.	This provision does not apply to Small Wireless Facilities.	This provision does not apply to Small Wireless Facilities.		

19.68.160 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 the City 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.

19.68.170 Appeals.

Appeals may be commenced on an action by the decision-maker on a permit application, within thirty (30) days of such act or failure to act, in any court of competent jurisdiction. This section supersedes the City's administrative appeal process set forth in Section 19.20.210.

19.68.180 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.

19.68.190 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. The zones referred to below are defined in the City's general zoning code.

Type of Facility	Residential Zones (R1, R2, R2A, R3, R3A, R4, R4A, OT)	Mixed Use Zones (CBD, C, MMU, CM, CM2, P)	Industrial Zones (LM, LM1, MS, HM, I, AZ)
Monopole	Permitted with WSF, except permitted with WCUP in OT	Permitted with WSF, except permitted with WCUP in P and except not permitted in CBD	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	Permitted with WSF
Utility Poles	Permitted with WCUP	Permitted with WSF, except permitted with WCUP in P, and except not permitted in CBD	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 WCUP	Permitted with WSF	Permitted with WSF
Building Attached	Permitted with WSF, only on buildings with nonresidential uses, and except permitted with WCUP in OT	Permitted with WSF	Permitted with WSF
Stealth Support Structure	Permitted with WSF, except permitted with WCUP in OT	Permitted with WSF, except permitted with WCUP in P	Permitted with WSF
Other Types Not Listed	Permitted with WCUP	Permitted with WCUP	Permitted with WCUP

Commented [KA6]: There is insufficient time under the federal shot clocks to use this process with small wireless facilities

19.68.200 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 and is centered on top of the support structure; or be placed pursuant to the City's adopted design standards, 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 is permitted when the City's adopted design 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 City's typical landscaping requirements. 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. These dimension limitations do not apply to Small Wireless Facilities. 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

Commented [KA7]: Verizon requests an exception to this for small wireless facilities, as colocation is not possible and requiring an engineering certification for each pole is unduly burdensome.

	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 the City and/or Federal noise regulations, 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 and/or equipment cabinets must be surrounded with a minimum of four feet wide landscaping, in the applicable zones set forth in the City's general zoning provisions, if technically feasible. 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, antennas, monopoles, and other wireless facilities and equipment pertaining thereto 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 City or Federal noise regulations, 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 their 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.

Commented [KA8]: Verizon requests deleting this requirement, as it is unclear what is being requested.

(B) Standards for specific types of facilities:

New Monopoles and Stealth Wireless 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 has been designed in a manner that will allow for the colocation of at least one additional antenna array on the structure.
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The Anacortes Municipal Code is current through Ordinance____and legislation passed through_____[Date].

	4. The height of the monopole may not exceed 120 feet or the height of similar structures permitted in the zone within which it is located, whichever is greater.
Colocating Monopoles or Utility Poles Within Public Rights-of-Way	1. More than one facility may be colocated on any monopole, subject to the permits. 2. Monopoles 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 monopole 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 20 feet in the public right-of-way. 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 electric transmission tower) 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 playfield, ballfield, or stadium light. 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.
Building Attached	The equipment for roof-mounted antennas within the OT 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.

19.68.210 Requirements for colocations.

(A) All wireless facilities colocating within the City of Anacortes must meet the following standards. This section does not apply to Eligible Facilities Requests.

(B) Colocations (as defined in Section 19.68.030(5)) are permitted on existing monopoles and 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 vertical 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 30 feet to accommodate the minimum separation requirement. The height of the existing facility with all increases in height due to colocations may not exceed the general height limitation for similar structures or buildings within the zone in which it is permitted or 120 feet, whichever is greater.

(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 within the public right-of-way, or within 30 feet of the existing structure outside of the public right-of-way, and maintain the design of the original structure, including any stealth or camouflage components. To determine feasibility, the applicant must submit an engineer's report regarding the feasibility of a proposed replacement.

(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 19.68.200.

19.68.220 Requirements for Non-Substantial Changes.

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 City or Federal noise regulations. A noise study must be submitted with any modification to antennas or equipment.

(B) No modification may violate the Federal radio-frequency emission standards.

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

19.68.230 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.

19.68.240 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.

19.68.250 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).

19.68.260 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.

19.68.270 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.

19.68.280 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.

19.68.290 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.

19.68.300 SEPA.

Integration of environmental review. An application for a wireless service facility permit or wireless 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*

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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.

XX.XX.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. A master permit does not include cable television franchises or permits.

(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 Federal regulations;

(E) The facilities are not located on Tribal lands, which means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; 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;

(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 Optional pre-application.

An applicant may submit materials up to thirty (30) days in advance of an application for a construction permit or master permit. The information submitted along with a pre-application may include the following information:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) Preliminary engineering plans, specifications, and maps of the facilities to be located within the public right-of-way;
- (5) Detailed construction plans demonstrating compliance with all applicable City codes and construction specifications, including the City's Engineering Standards;
- (6) 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;
- (7) A brief description of non-confidential, nonproprietary transmission medium that will be used to offer or provide such services;
- (8) 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;
- (9) 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;
- (10) The area or areas of the City the applicant desires to serve and a schedule for building out (offering service to) the entire area covered by the master permit;
- (11) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements; and/or
- (12) 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.

XX.XX.060 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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
 - (12) 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.
 - (13) 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) Applications for Small Wireless Facilities may be submitted in batches, which may encompass multiple separate applications filed at the same time, each for one or more sites, *or* a single application covering multiple sites.
- (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 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 area encompassed by the master permit;
- (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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
- (10) 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) Applications for Small Wireless Facilities may be submitted in batches, which may encompass up to five separate applications filed at the same time, each for one or more sites, *or* a single application covering up to five sites.

(E) 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.080 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.090 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	Written Decision due within 90 days.

	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
					she exceed the timeframes for review set forth in this table.	

XX.XX.100 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.110 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 the right 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.120 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.130 Nondiscrimination.

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

XX.XX.140 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 the area covered by the master permit 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.150 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.160 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.170 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.180 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.190 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.200 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.210 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.220 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 policies, 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.230 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.240 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.250 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.260 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 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.270 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 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.280 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.290 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.300 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.310 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.320 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.330 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.340 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.350 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.360 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.370 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.380 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 Chapters 15.32 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.390 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.400 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.410 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.420 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.



January 16, 2019

Via Email c/o Darcy Swetnam, City Attorney
darcys@cityofanacortes.org

Anacortes WA Planning Commission
Re: Anacortes WA Wireless Code Ordinance

Dear Commissioners,

Thank you for the opportunity to provide feedback on the wireless code update. Verizon appreciates the chance to provide information about the enormous increase in consumer demand for data capacity and cell service, as well as input on the technical requirements for the new small cell technology. Verizon supports the general direction and language of the draft code and is appreciative of the effort by staff to address the needs of the wireless industry. Because this is a permanent code and will significantly impact the delivery of wireless service to the residents, businesses and visitors to the city of Anacortes, Verizon would request an opportunity to meet with staff and industry representatives to go through the requested changes before the Commission makes its recommendation to Council.

This new technology is vital to address the coverage and capacity needs of Verizon's customers. More people are using more wireless devices to do more things than ever before, like streaming video and uploading images. In fact, wireless data usage tripled from 2013 to 2015 and is forecast to multiply seven-fold from 2015 to 2019.

Verizon is working to stay ahead of the demand by adding fiber optic capacity and small cells to connect people where they need it most. Small cell antennas are usually mounted on existing utility and street light poles. The low visual profile of small cells makes them an excellent solution for delivering capacity and coverage to residential neighborhoods. Small cells will also deliver connections for smart communities services to boost the flow and safety of vehicle traffic, manage resources like light, power and water and improve the quality of life of Verizon's customers. Moreover, this technology is key to preparing Verizon's network infrastructure so that it is capable of offering 5G wireless connections at speeds up to 100 times faster than today's wired broadband services.

In reviewing the draft, there are some provisions where Verizon has concerns that the ordinance does not reflect the recent changes in federal law and the technical requirements of this needed infrastructure:

1. 19.68.030. (5) Definitions--the definition is colocation is inconsistent with the definition in the FCC Order that took effect this week. Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order (September 26, 2018) ("Order") Verizon requests that the language from the Order be used.
2. 19.68.050 and 060--These sections contain additional definitions. Verizon requests that, for clarity, these sections be deleted and the FCC's definition of "substantial change" be added as subsection (23) to 19.68.050.
3. 19.68.090 and 19.68.190 require a conditional use permit for all small wireless facilities in residential zones. This involves a Type 3 process before the hearing examiner, with public notice. The permits for a small wireless facility must be processed within 60 days for a colocation and 90 days for a new pole, including appeals. There is insufficient time for a conditional use permit process which requires notice and hearing. Verizon requests that all small wireless facilities be processed administratively, in order to meet the federal shot clocks.
4. 19.68.120(B) requires a showing of need for the small wireless facility. The Order, at Paragraphs 35-37, says that such a showing may not be required. Verizon requests that this section be deleted.
5. 19.68.200 General (A)(2) Verizon requests an exception to this for small wireless facilities, as colocation is not possible and requiring an engineering certification for each pole is unduly burdensome.
6. 19.68.200 Appearance and Screening (A)(2) Verizon requests deleting this requirement, as it is unclear what is being requested.

Thank you for the opportunity to comment and we look forward to continuing to work with the city to develop a code that preserves the look and feel of your community, while providing an efficient, workable and federally compliant process to deliver the service your residents, visitors and businesses have come to expect. A Verizon Wireless representative will be at your meeting to provide testimony, answer questions and provide information, as needed.

Sincerely,



Kim Allen

Wireless Policy Group, LLC on behalf of Verizon Wireless

January 16, 2019

City of Anacortes Planning Commission
904 6th Street
P.O. Box 547
Anacortes, WA 98221

VIA EMAIL

Re: Public Hearing, January 16, 2019, Wireless Telecommunications Draft Regulations

Dear Planning Commission Members:

On behalf of T-Mobile, we are submitting these written comments on the proposed Wireless Telecommunications Draft Regulations. We appreciate the opportunity to comment on these proposed changes.

Regarding any wireless facility code update, T-Mobile has general concerns that (a) the code allow reasonable opportunities to site macro facilities to ensure that primary coverage meeting customer needs is able to be provided to all areas; (b) that facility upgrades that qualify for treatment as Eligible Facilities requests are expeditiously identified and allowed as required by federal law; (c) that a clear path for locating Small Wireless Facilities (small cells) in the public right of way on existing electrical utility poles and City street lights is made available, and that the process requirements and timeframes for approval of small cell applications are compliant with federal law, including the recent FCC September 2018 Order; and (d) that federal shot clocks for timely processing of wireless facility applications will be met.

The proposed draft Anacortes ordinance appears to be broadly aimed at covering these areas of concern. However, with respect to the details of some provisions, and as to the path for small cells, T-Mobile believes there is still work to be done on the ordinance draft. A few examples of areas of concern with the draft are:

1. Definitions. The proposed regulations contain a number of definitions that are complex and potentially confusing, with some potential discrepancies between the proposed definitions and federal law. For example, the definition of “Colocation” in Chapter 19.68 is divided into two tracks, one for Eligible Facilities Requests, and one for Small Wireless facilities and other wireless facilities. This latter definition is very complex, with multiple parts, a

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characteristic that raises concerns about whether the definition can be efficiently and correctly applied by applicants and staff working on applications.

In addition, although industry commented at the recent Planning Commission public meeting on the need to synchronize the “colocation” definition with federal law, the definition still seems to need some attention in this area, as under federal law “colocation” means placing a wireless facility on an existing structure *without* any requirement that there be an existing antenna on the structure; but proposed 19.68.030 (5) does not comply with federal law in this respect.¹ Synchronizing this aspect of the definition with federal law is important for proper application of the shot clocks established by federal law; this affects proposed 19.68.150, regarding colocation of small wireless facilities as well.

As another example, the definition of “wireless support structure” in 19.68.030 (29) is quite different (practically opposite) the definition of the same term in the definitions section of the right of way master use permit chapter. This creates confusion in understanding and administering the provisions of the two chapters.

2. Small Wireless Facilities. Small Wireless Facilities (“SWF”) are addressed in both Chapter 19.68 and in the proposed right of way master use permit chapter. There is no clear statement in either chapter as to whether SWF in the public right of way are subject to both chapters. Assuming that both chapters will apply, there are concerns about discrepancies or ambiguities in the definitions applicable in each chapter, see above. Additionally, the structure of the regulations as applied to SWF is not as clear as it could be as to what types of structures SWF will be allowed on, for example, electrical utility poles, city poles, or potentially new purpose built poles. Industry commented at the public meeting that separating SWF regulations from (a) macro regulations and (b) Eligible Facilities Request regulations would be extremely helpful. Most jurisdictions have separate sections to address these different types of facilities.

We note that in 19.68.120, concerning permit review criteria, there is still a requirement that a new SWF application provide a justification based on significant gap, new services, densification or other service justification for the application. This is not consistent with the FCC September Order, as was commented at the public meeting.

¹ In its final rule to implement the September 2018 Order, the FCC stated: “64. The Commission takes this opportunity to clarify that for purposes of the Section 332 shot clocks, attachment of facilities to existing structures constitutes collocation, regardless of whether the structure or the location has previously been zoned for wireless facilities. As the Commission stated in 2009, “an application is a request for collocation if it does not involve a ‘substantial increase in the size of a tower’ as defined in the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas.” The definition of “[c]ollocation” in the NPA provides for the “mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.”

3. Conditional Use Criteria.

In 19.68.130 (2), among the conditional use approval criteria, we note a requirement that a macro facility demonstrate compatibility with the height and mass of existing buildings in the area. Because macro facilities typically are taller than their surroundings in order to provide necessary primary coverage, this particular criterion may be too stringent.

Small Wireless Facility Information

Small Wireless Facilities (SWF” or “small cells”) are a particular type of wireless facility installation that are intended primarily to address network capacity needs and management of network traffic, particularly in areas of high demand or urban density. Unlike the traditional macro cell (tower) wireless facility which is designed to provide primary coverage to a defined geographical area, small cells are designed to work with macro sites to manage heavy wireless traffic in order to provide optimal network functionality and to ensure that wireless customers have access to the high quality and reliable wireless service they have come to expect.

In order to ensure that all wireless communications users have access to an optimal network, it is particularly important that regulations for permitting small cell deployment be flexible enough to accommodate a range of aesthetic solutions, and to allow for technological evolution. Each wireless carrier has small cell designs that are customized according to the carrier’s network frequency and design and its anticipated capacity needs. Further, all carriers’ technologies are continually evolving. Thus small cell design standards should avoid inadvertently forcing carriers to choose specific technologies or equipment, effectively discriminating among carrier technologies in violation of federal neutrality requirements.

For assistance in better understanding T-Mobile’s small cell equipment, we are submitting the attached informational packet with this letter to better inform the Planning Commission as to the form factor and typical integrated appearance of T-Mobile SWF equipment. T-Mobile’s SWF integrates antennas and equipment into a single unified enclosure which is compatible with a variety of street and utility poles, as illustrated in the packet.

Request for Additional Stakeholder Meeting(s) with Staff

The comments above are not exhaustive, but rather more illustrative of lingering issues, including structural issues, with the proposed regulations. The complexity of the regulations, particularly since this is a complete replacement for existing regulations, is a concern given the relatively short timeframes that have been provided for review and analysis of the draft prior to the public hearing. T-Mobile would reiterate earlier requests from industry representatives for a stakeholder meeting to be held with staff in order to work specifically on structural and other issues that remain with the proposed regulations. This approach has been successfully used in

January 16, 2019

Page 4

other jurisdictions to address complex drafting issues such as the ones presented with this Anacortes draft.

Thus, we would urge the Planning Commission to give direction to staff to have a continued dialogue with wireless service providers in the form of one or more stakeholder meetings, so that issues of common concern can be articulated to staff, and complex drafting issues can be better discussed.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in blue ink, appearing to read "Linda W. Atkins". The signature is fluid and cursive, with the first name "Linda" and last name "Atkins" clearly distinguishable.

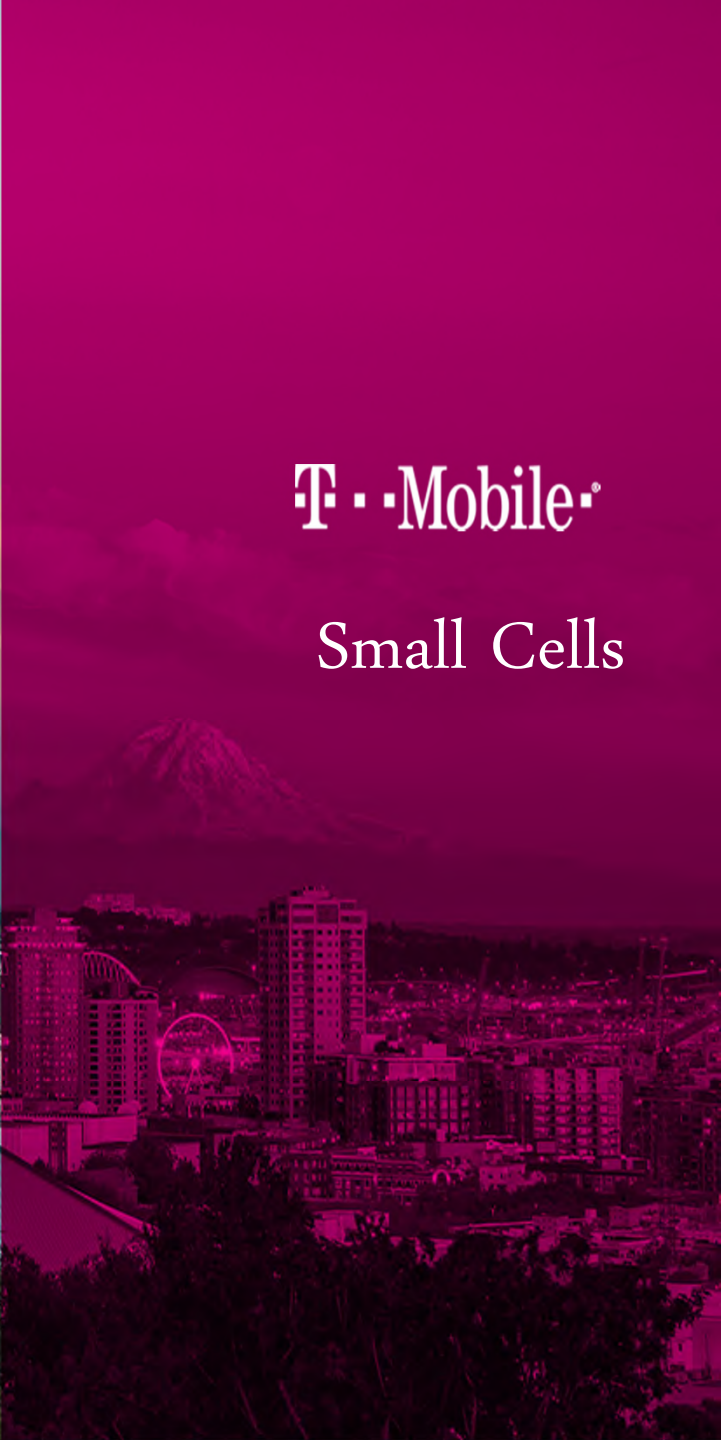
Linda White Atkins

cc: Don Measamer
Darcy Swetnam



T-Mobile

Small Cells



T-Mobile as a Company

**72.6
million**

Total
customers as
of Q4 2017

50,000+

employees
nationwide
(5,000+ in
Seattle metro)

19

straight
quarters 1
million plus net
customer
additions

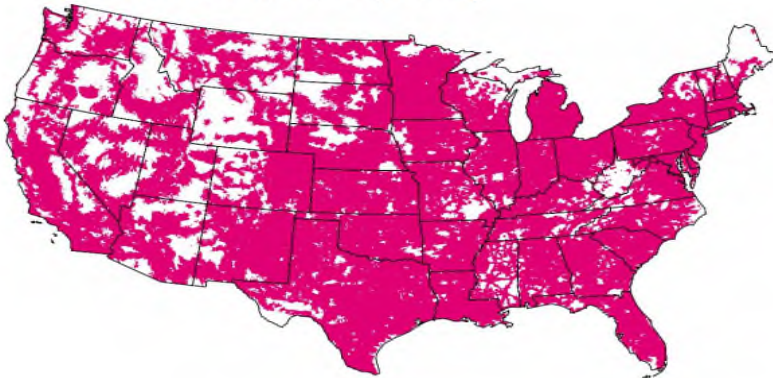
1,500

new T-Mobile
branded stores
in 2017

1,300

new MetroPCS
branded stores
in 2017

T-Mobile Coverage Map
(as of December 31, 2017)



**322 million LTE
POPs**

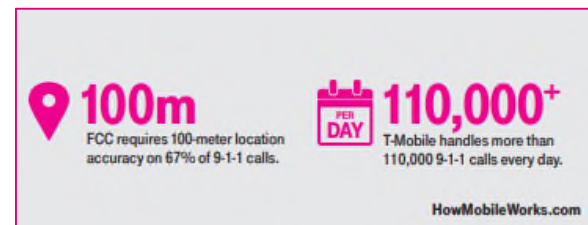
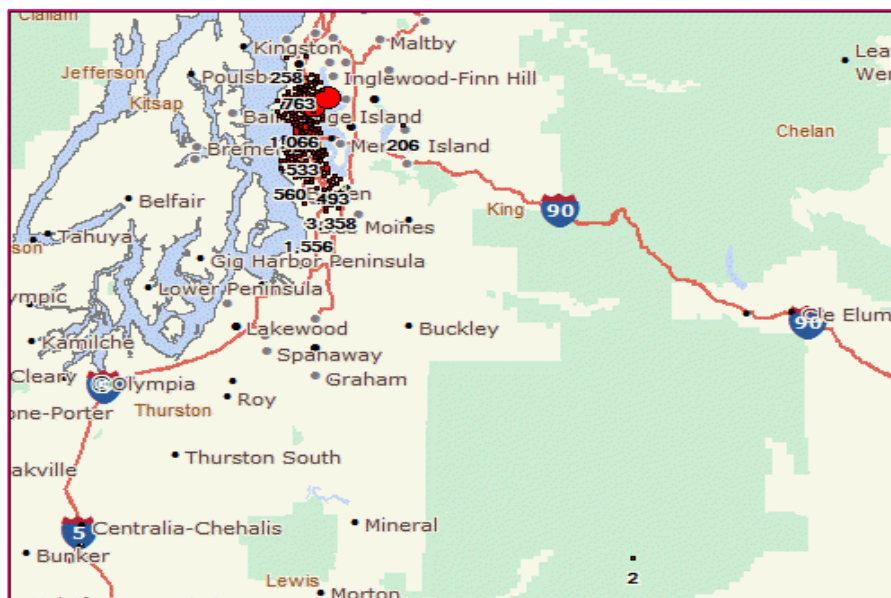


Wireless Infrastructure is Critical

- > 50% of households **wireless only**
- 70% of phone calls are initiated from a **mobile phone**
- 80% of adults use smartphones
- 70% of time spent on digital media is on a **mobile device**
- YOY growth in data usage is at least **1.5 X**



273,539 calls to T-Mobile's Network (2017-2018)



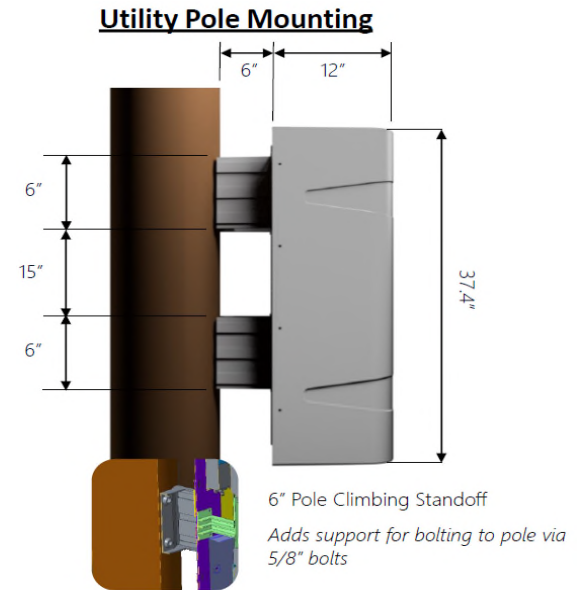
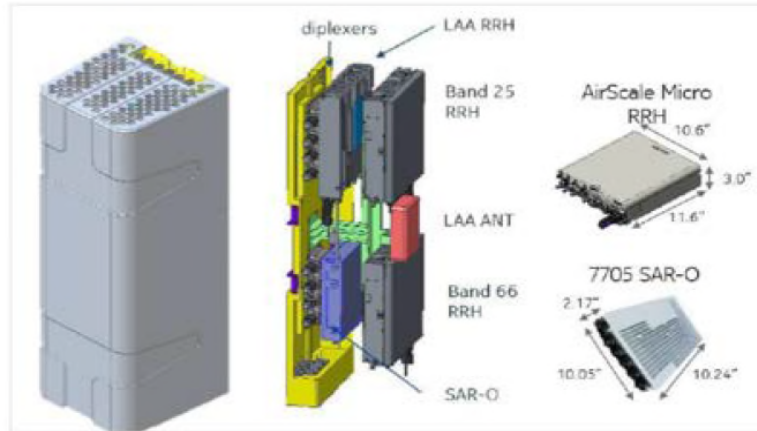
ENHANCED 9-1-1 LOCATION ACCURACY:



- Network requirements to meet these demands
 - **COVERAGE** – Rural, Suburban & Urban
 - **SPECTRUM** – Foundation of a wireless network
 - **CAPACITY** – Constant upgrading of technologies, software, hardware, & infrastructure
 - **DENSIFICATION** – Essential for 4G and 5G
- Local siting policies should consider
 - **ACCESS** – particularly in the right of way
 - **FLEXIBILITY** – allow for different types of designs by each carrier and future innovation
 - **STREAMLINING PROCESSES** – by exempting small cells from zoning review
 - **TIMEFRAMES** – provide predictable and timely permitting
 - **FEES** – require reasonable and non-discriminatory fees



T-Mobile's Small Cell Shroud



- Sleek design
- Creates uniformity
- Antennas and radios in close proximity for improved function (faster data speeds)
- Can blend with existing infrastructure

Las Vegas Installation

T-Mobile
NATIONAL DEVELOPMENT

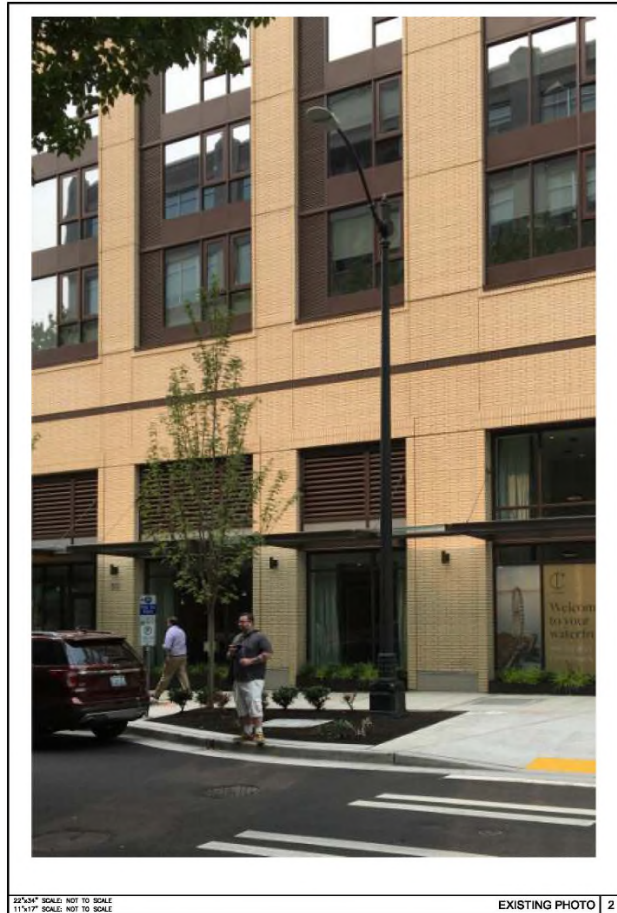


Seattle Photo Sims

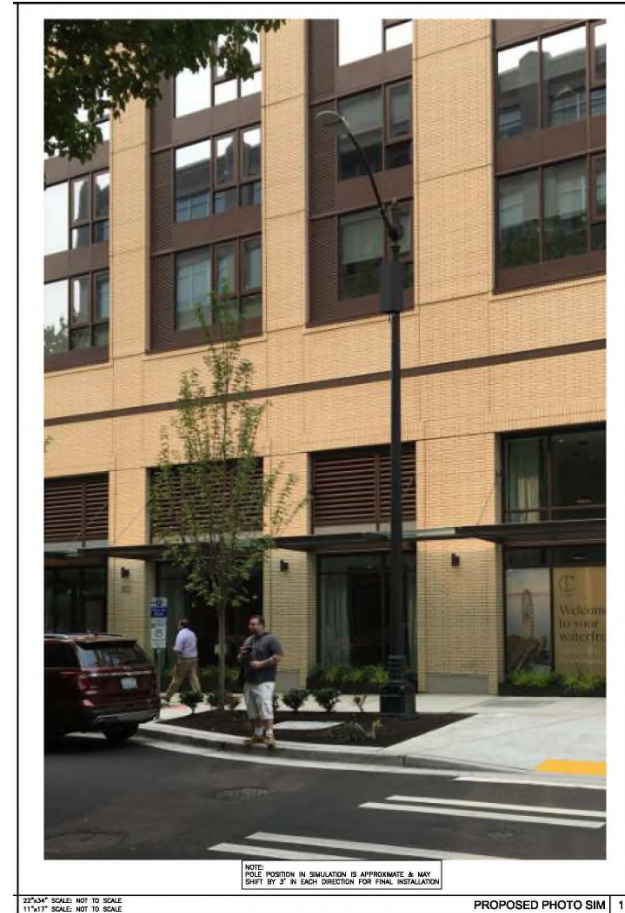
(Proposed)

T-Mobile
NATIONAL DEVELOPMENT

Existing



Proposed

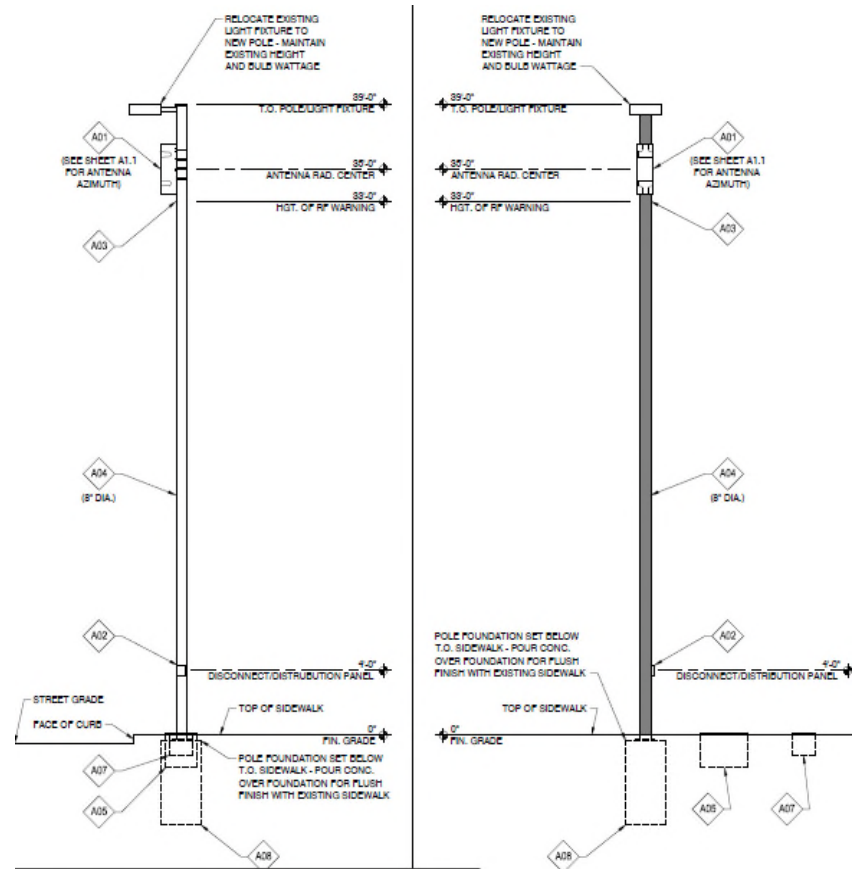


Bellevue Photo Sims

(Proposed)

Existing

Proposed



Issaquah Photo Sims

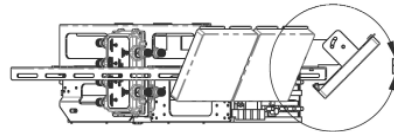
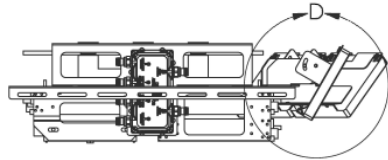
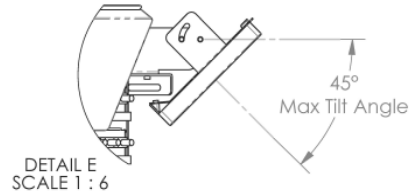
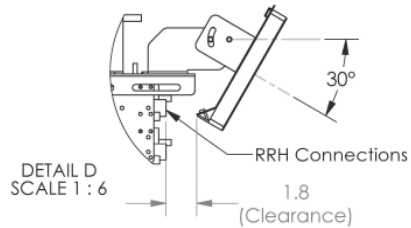
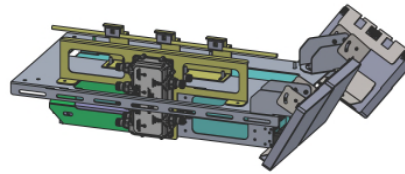
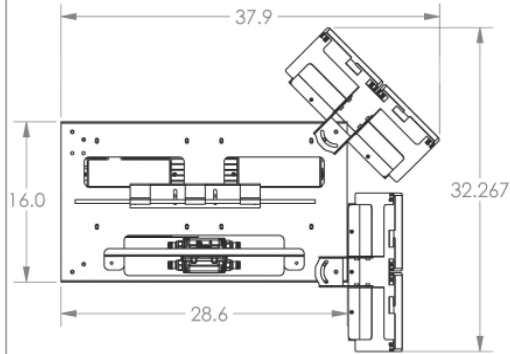
(Proposed)



T-Mobile's Strand-Mount Solution

W:\Antennas\Strand Mount Antenna\S080830\

NAME: Strand Mount Antenna
DWG: S080830-C
AGT 12/20/2017



Sheet 1 of 3



Salt Lake City Installation

T-Mobile
NATIONAL DEVELOPMENT





January 30, 2019

Via Email c/o Darcy Swetnam, City Attorney
darcys@cityofanacortes.org

Anacortes WA Planning Commission
Re: Anacortes WA Wireless Code Ordinance

Dear Commissioners,

Thank you for the opportunity to provide continued feedback on the wireless code update. In reviewing the most recent draft, there are some provisions where Verizon has continuing concerns that the ordinance does not reflect the recent changes in federal law and the technical requirements of this needed infrastructure:

1. 19.68.050 and 060--These sections contain additional definitions. Verizon requests that, for clarity, these sections be deleted and the FCC's definition of "substantial change" be added as subsection (23) to 19.68.050.
2. 19.68.080(11) Eligible Facilities Request applications requires copies of the original permits for the tower. The last version also allowed use of later modification permits, as these documents also have the terms and conditions of the original permit and are more readily available for older towers. Verizon requests this language be restored.
3. 19.68.090 and 19.68.190 require a conditional use permit for all small wireless facilities in residential zones. This involves a Type 3 process before the hearing examiner, with public notice and a required community meeting before the hearing which would start the shot clock. Type 3 permits also have an appeal to the City Council. The permits for a small wireless facility must be processed within 60 days for a colocation and 90 days for a new pole, including appeals. There is insufficient time for a conditional use permit process which requires notice and hearing. Verizon requests that all small wireless facilities be processed administratively, in order to meet the federal shot clocks.
4. 19.68.190 Table--The table is internally inconsistent. Attachment of a SWF to any of the existing structures in the 1st column does not warrant the full CUP process, as discussed above. It is also not consistent with the row below that allows SWF's in all zones with a WSF.

5. 19.68.120(B) requires a showing of need for the small wireless facility. The Order, at Paragraphs 35-40, says that such a showing may not be required. Verizon requests that this section be deleted.
6. 19.68.200 General (A)(2) Verizon requests an exception to this for small wireless facilities, as colocation is not possible and requiring an engineering certification for each pole to assert that is unduly burdensome.
7. 19.68.200 Appearance and Screening, Landscaping, Setbacks-- Verizon requests deleting these requirements for SWF's in the ROW, as they are traditional tower regulations that would materially inhibit, or in the case of a 20' setback from lot lines, prohibit SWF's in the ROW.
8. 5.38.200-Security Fund Verizon requests that this fund balance be refunded when the agreement expires, and all facilities have been removed.
9. 5.38.220-Insurance Verizon requests an option to self insure.

Thank you for the opportunity to comment and we look forward to continuing to work with the city to develop a code that preserves the look and feel of your community, while providing an efficient, workable and federally compliant process to deliver the service your residents, visitors and businesses have come to expect. I will be at your meeting to provide testimony, answer questions and provide information, as needed.

Sincerely,



Kim Allen
Wireless Policy Group, LLC on behalf of Verizon Wireless

Received by COA 1/30/19
From Kim Allen, Verizon
Re: Requested redlines

1/30/19 PC Packet Page 1 of 44



Planning Commission Agenda Bill

Meeting Date: 1/30/2019 **Agenda Item:** [Click here to enter text.](#)

Subject: Wireless Code Updates: Public Hearing

Staff Contact: Darcy Swetnam, Don Measamer

Approved for Submittal to PC by	
	Laurie Gere, Mayor
x	Don Measamer, PCED Director
	Darcy Swetnam, City Attorney

Action Type	
x	Public Hearing
	Staff Report
	Discussion

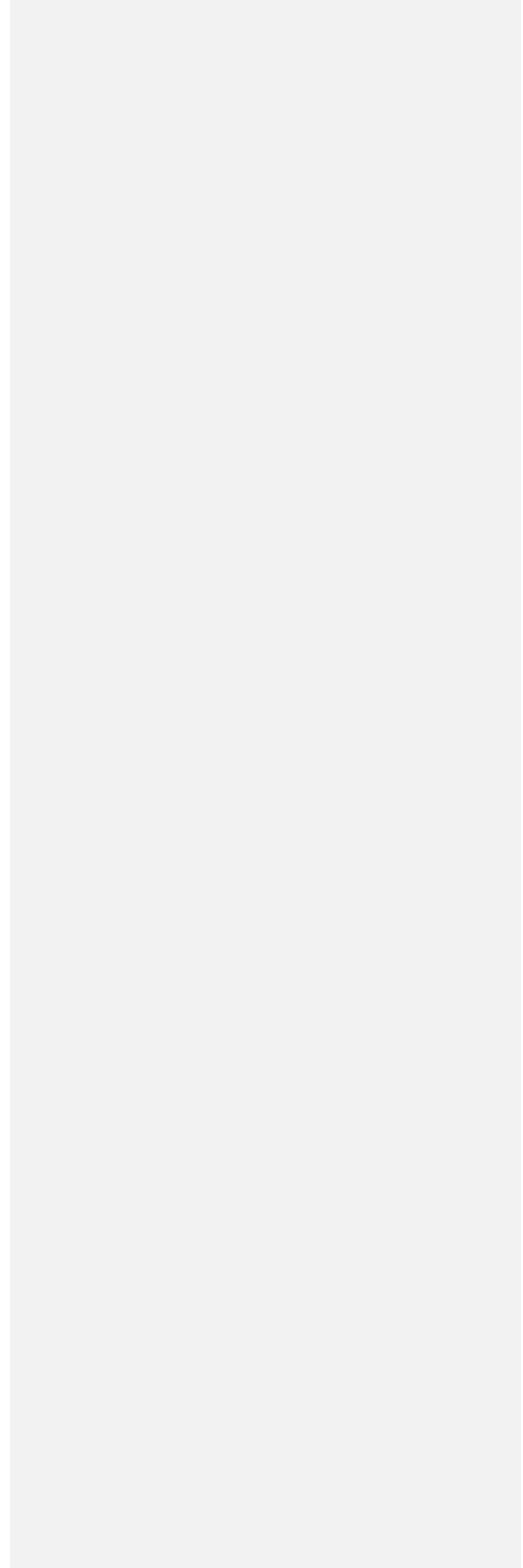
Summary Statement: The draft wireless service facilities and utility and telecommunication ROW use regulations have been revised based on additional public comment and feedback received at the January 16, 2019 public hearing. Upon closing the public hearing, staff recommends the Planning Commission make a motion to recommend approval of the draft regulations to City Council. A draft recommendation with findings of fact per AMC 19.16.080(C)(3) is forthcoming for the Planning Commission's review.

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.

Recommended Motion: I move to recommend to the City Council approval of draft AMC Ch. 19.68 Wireless Service Facilities and AMC 5.38 Public Utility and Telecommunications Right-of-Way Use.

Attachments:

- Revised DRAFT Ch. 19.68 Wireless Service Facilities
- Revised DRAFT Ch. 5.38 Public Utility and Telecommunications Right of Way Use



Chapter 19.68

WIRELESS SERVICE FACILITIES

Sections:

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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 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.

The Anacortes Municipal Code is current through Ordinance____ and legislation passed through_____[Date].

- (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” for the purposes of Eligible Facilities Requests 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) “Colocation” for the purpose of applications to site Small Wireless Facilities and other wireless facilities, excluding Eligible Facilities Requests, means
- (a) Mounting or installing an antenna facility on a pre-existing structure, and/or
 - (b) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (6) “Director” means the Director of Planning, Community, and Economic Development.
- (7) “Electrical transmission tower” means a structure that physically supports high voltage overhead power lines. The term does not include a utility pole.
- (8) “Eligible Facilities Request” or “EFR”. Any request for modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station, involving:
- (i) Colocation of new transmission equipment;
 - (ii) Removal of transmission equipment; or
 - (iii) Replacement of transmission equipment.
- (9) “Eligible Support Structure.” Any tower or base station, provided that it exists at the time the relevant EFR application is filed with the state or local government.
- (10) “Equipment Cabinet” means an enclosure that is mounted above base flood elevation or placed on a concrete slab that contains 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.
- (11) “Equipment Shelter” means an enclosed structure, shed or box at the base of a mount to store 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.

(12) "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.

(13) "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.

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

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

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

(21) "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,

(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, 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 Federal law;

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(E) The facilities are not located on Tribal lands, means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; and

(F) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under Federal law pertaining to wireless facilities.

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

(23) “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.

(24) “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.

(25) “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.

(26) “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.

(27) “Utility pole” means a pole privately owned or installed by a utility company for the purpose of electrical transmission.

(28) “Wireless” means communications using radio frequency or optical emissions to complete one or more communications paths in whole or in part among originating and receiving points without other tangible physical connection, including without limitation, radio and unguided optical waves, and the apparatus used for such transmission.

(29) “Wireless support structure” means a freestanding structure that is designed to support or is capable of supporting wireless facilities. The term does not include a utility pole, monopole, street pole, or tower.

19.68.040 Permit required.

(A) New Facilities. A wireless service facility (WSF) permit or wireless 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 or conditional wireless use permit (WCUP) is required in every zone prior to the colocation of any wireless service facility and is required for modifications that qualify as a Substantial Change. Colocations involving modifications under subsection (C) below are exempt from this requirement.

(C) Non-Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that meets the criteria for a Non-Substantial Change as set forth in 19.68.060

The Anacortes Municipal Code is current through Ordinance _____ and legislation passed through _____ [Date].

Commented [KA1]: Is there a subsection number missing here?

must submit an Eligible Facility Request application. A WSF or WCUP will not be required for these types of modifications.

(D) Substantial Change. A modification to an existing facility that involves the addition, removal, and/or replacement of transmission equipment that is a Substantial Change as defined in 19.68.050 is 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 WCUP must also meet the criteria for said use permits set forth in Section 19.68.130.

(F) A building permit is also required for any new wireless facility or collocating facility.

19.68.050 Substantial Change.

(A) "Substantial Change" 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 involves adding an appurtenance to the body of the tower that 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 other eligible support structures, 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 more than the standard number of new equipment cabinets, not to exceed four; 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 any eligible support structure, if the modification entails any excavation or deployment outside the current site;

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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 Change.

(A) "Non-substantial Change" 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 any eligible support structure, if the modification does not entail any excavation or deployment outside the current site

Criterion 5:

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

Criterion 6:

For any eligible support structure, 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 Optional Pre-application.

An optional pre-application may be submitted up to thirty (30) days prior to the submission of an Eligible Facilities Request application, or a permit application associated with a Small Wireless Facility or other wireless facility. The information submitted along with a pre-application may include the following information:

- (1) The name and address of the applicant;

- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (5) A stamped report by a state of Washington registered professional engineer demonstrating compliance with existing structural, electrical, and safety codes, and describing the general structural capacity of the eligible facility, small wireless facility, or other wireless facility.
- (6) Detailed site plan and drawings.
- (7) 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).
- (8) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure;
- (9) If new equipment cabinets, generators, or any other ground equipment components are being proposed, an assessment of noise that shows compliance with City and/or Federal noise standards.
- (10) A description of compliance with the applicable visibility and performance standards set forth in section 19.68.200.
- (11) A stamped report by a state of Washington registered professional engineer demonstrating compliance with radio-frequency emissions standards.

19.68.080 Eligible Facilities Request applications.

- (A) For the purposes of this section, a complete application includes:
 - (1) The name and address of the applicant;
 - (2) Identification of all carriers using the facility;
 - (3) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act.
 - (4) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
 - (5) If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, the applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended with the modification. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
 - (6) If the applicant proposes a modification to a tower, an attestation that the proposed modifications will comply with existing structural, electrical, and safety codes, and a description of the general structural capacity of the tower with the proposed modification.

The Anacortes Municipal Code is current through Ordinance____ and legislation passed through _____[Date].

(7) If the applicant proposes a modification to a base station, an attestation that the proposed modifications will comply with existing structural, electrical, and safety codes.

(8) If the applicant proposes a modification requiring alteration to the eligible support structure, excavation, installation of new equipment cabinets, or other activities impacting or altering the land, existing structures, fencing or landscaping, the applicant must submit a detailed site plan and drawings, showing the point of true north, and an appropriate scale depicting:

- (i) the location, elevation, and dimensions of the existing eligible support structure;
- (ii) the location, elevation, and dimensions of the existing transmission equipment;
- (iii) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;
- (iv) the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each;
- (v) any proposed modification to the eligible support structure;
- (vi) the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
- (vii) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

(9) If excavation or deployment is proposed outside the current site of the tower or base station, a description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions showing the tower or base station with respect to the site. The city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site.

(10) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

(11) Copies of the land use or building permit approval that authorized the original installation of the tower or wireless facilities on the structure, or any subsequent approval(s) granting modification to the tower or wireless facilities on the structure, if available.

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

(13) A stamped report by a state of Washington registered professional engineer demonstrating compliance with Federal radio-frequency emissions standards for wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the non-substantial change criteria. A waiver, to be effective, must be in writing and signed by the approval authority.

(C) Eligible facilities for review under this section include Non-Substantial Changes 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.

(D) 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 Change. If the City determines that the application involves a Substantial Change, the applicant must submit the appropriate Permit application required, if any, under the requirements in Section 19.68.080.

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Commented [KA2]: This language was in the previous draft and recognizes that the terms and conditions of the original permit are included in permits to later modify the facility.

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19.68.090 Permit application – Small Wireless Facility.

(A) Application. A complete application for a wireless service facility permit or wireless conditional use permit must include the following information and materials on a form provided by the Director. Applications for Small Wireless Facilities may be submitted in batches of applications, which may encompass up to five separate applications filed at the same time, each for one or more sites, *or* a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications. For the purposes of this section, a complete application includes:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (4) An attestation that the Permittee will comply with existing structural, electrical, and safety codes, and a description of the general structural capacity of the new small wireless facility or the facility upon which the small wireless facility is to be colocated.
- (5) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:
 - (a) 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 wireless facilities, elevation drawings of the proposed tower and any other structures, topography of the site, and proposed parking;
 - (b) If the proposed Small Wireless Facility siting involves a colocation that will alter the exterior dimensions or appearance of an existing facility, applicant shall include a detailed visual simulation depicting how the existing facility will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended, if applicable. The visual simulation shall depict to scale the existing facility with any colocation in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
 - (c) Legal description of the parent tract and leased parcel (if applicable);
 - (d) If new equipment cabinets, generators, or any other ground equipment components are being proposed:
 - (i) an assessment of noise that shows compliance with City and/or Federal noise standards;
 - (ii) a description of the method of concealment of equipment components, such as: whether such components will be located 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; located underground; or within an equipment cabinet or shelter;
 - (iii) if equipment is proposed to be concealed within an equipment cabinet or shelter that will be located above ground, a description of the landscaping and screening, if technically feasible.
 - (e) Any engineering report(s) required to show feasibility of meeting the applicable criteria in this section as applicable;
- (6) A stamped report by a state of Washington registered professional engineer or an assessment demonstrating compliance with Federal radio-frequency emissions standards applicable to wireless facilities.

(B) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, would materially inhibit wireless service. A waiver, to be effective, must be in writing and signed by the approval authority.

(C) Fee. Every application for a small wireless service facility permit or wireless 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.

19.68.100 Permit application – all other Wireless Facilities.

(A) Application. A complete application for a wireless service facility permit or wireless conditional use permit for wireless facilities other than Small Wireless Facilities and Eligible Support Structures or EFRs must include the following information and materials on a form provided by the Director. For the purposes of this section, a complete application includes:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) If the applicant is not the owner or person in control of the eligible support structure or site, an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facility modification. If the eligible support structure is to be located within a public right-of-way, the applicant must also attest that the applicant has authorization to install, maintain, and operate transmission equipment in, under and above the public right-of-way.
- (4) A description of compliance with: the applicable visibility and performance standards set forth in section 19.68.200. This includes, but is not limited to:
 - (a) 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;
 - (b) Legal description of the parent tract and leased parcel;
 - (c) A landscape plan showing specific landscape materials;
 - (d) Method of fencing, the finished color and/or the method of camouflage and illumination.
- (5) A description of compliance with the additional requirements in this Chapter for collocating and/or for conditional uses, if applicable.
- (6) If new equipment cabinets, generators, or any other ground equipment components are being proposed:(i) an assessment of noise that shows compliance with City and/or Federal noise standards.
- (7) A stamped report by a state of Washington registered professional engineer [or an assessment](#) demonstrating compliance with radio-frequency emissions standards as set forth in Section 19.68.240.

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

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

Commented [KA4]: Recognizes the fact that RF engineers are often highly skilled and trained individuals that are not PE's.

(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.

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

(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 wireless 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.

19.68.110 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.

(C) This permit approval process does not apply to Eligible Facility Requests.

19.68.120 Permit review – general criteria.

(A) In evaluating a permit application under this Chapter, the decision-maker 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 19.68.200;

(3) Whether the applicant has shown that its proposed facility meets any additional requirements in this Chapter for collocating and/or conditional uses, if applicable.

(B) For a new wireless facility ~~or a new Small Wireless 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 decision-maker 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 administering 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.

Commented [KA5]: There is no requirement for a showing of need for SWF's in the right of way under the FCC Order, Paragraphs 35-40.

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19.68.130 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 compatibility of the proposed structure with the height and mass of existing buildings in the area.

(3) 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 19.68.200 which most closely match the proposed facility;

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

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

(6) 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.

19.68.140 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 decision-maker 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.

19.68.150 Timeframe for review.

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The timeframe for review of an application for a wireless facility permit or wireless conditional use 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) days from receipt of submission of application	Written decision due within ninety (90) days from submission of application	Written decision due within one hundred and fifty (150) days from submission of application.	Written decision due within sixty (60) days from submission of application	Written decision due within ninety (90) days from submission of application.
Notes	If the City finds that the application involves a Substantial Change, the City may process the application as one for a new facility or deny the application.	This provision does not apply to Small Wireless Facilities.	This provision does not apply to Small Wireless Facilities.		

19.68.160 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 the City 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.

19.68.170 Appeals.

Appeals may be commenced on an action by the decision-maker on a permit application, within thirty (30) days of such act or failure to act, in any court of competent jurisdiction. This section supersedes the City's administrative appeal process set forth in Section 19.20.210.

19.68.180 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.

19.68.190 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. The zones referred to below are defined in the City's general zoning code.

Type of Facility	Residential Zones (R1, R2, R2A, R3, R3A, R4, R4A, OT)	Mixed Use Zones (CBD, C, MMU, CM, CM2, P)	Industrial Zones (LM, LM1, MS, HM, I, AZ)
Monopole	Permitted with WCUP	Permitted with WSF, except permitted with WCUP in P and except not permitted in CBD	Permitted with WSF
Utility Poles	Permitted with WCUP	Permitted with WSF, except permitted with WCUP in P, and except not permitted in CBD	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	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 WCUP	Permitted with WSF	Permitted with WSF
Building Attached	Permitted with WSF, only on buildings with nonresidential uses, and except permitted with WCUP in OT	Permitted with WSF	Permitted with WSF
Stealth Support Structure	Permitted with WSF, except permitted with WCUP in OT	Permitted with WSF, except permitted with WCUP in P	Permitted with WSF
Small Wireless Facility	Permitted with WSF	Permitted with WSF	Permitted with WSF
Other Types Not Listed	Permitted with WCUP	Permitted with WCUP	Permitted with WCUP

Commented [KA6]: Does this include SWF's on utility poles? Attachment of a SWF to any of the existing structures in the 1st column does not warrant the full CUP process. It is also not consistent with the row below that allows SWF's in all zones with a WSF.

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19.68.200 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 (including Small Wireless Facilities)	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 and is centered on top of the support structure; or be placed pursuant to the City's adopted design standards, 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 is permitted when the City's adopted design 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 City's typical landscaping requirements. 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. These dimension limitations do not apply to Small Wireless Facilities. 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. <u>New macro facility towers</u> 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, if technically feasible. 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 the City and/or Federal noise regulations, 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 <u>other than SWF's</u> and/or equipment cabinets must be surrounded with a minimum of four feet wide landscaping, in the applicable zones set forth in the City's general zoning provisions, if technically feasible. 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, antennas, monopoles, and other wireless facilities and equipment pertaining thereto 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 City or Federal noise regulations, 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. 5. <u>These setback requirements do not apply to SWF's in the ROW.</u>
Spacing	1. In residential zones, towers and their 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.

Commented [KA7]: What is required here? Is this for when more than 12 inches is needed?

Commented [KA8]: The term "facilities" includes SWF's and collocated wireless facilities which would not need the type of screening here, typically limited to new towers.

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Commented [KA9]: This type of landscaping is typically required for macro sites but, as originally worded, could apply to pole mounted SWF cabinets.

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Commented [KA10]: The setbacks would effectively eliminate all ROW sites for SWF's if required to set back 20 feet from the lot line.

(B) Standards for specific types of facilities:

New Monopoles (including Small Wireless Facilities) and Stealth Wireless Support	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 has been designed in a manner that will allow for the colocation of at least one additional antenna array on the structure, if technically feasible.
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The Anacortes Municipal Code is current through Ordinance____and legislation passed through_____[Date].

Structures	4. The height of the monopole may not exceed 120 feet or the height of similar structures permitted in the zone within which it is located, whichever is greater.
Colocating Monopoles or Utility Poles Within Public Rights-of-Way	1. More than one facility may be colocated on any monopole, subject to the permits and technical feasibility. 2. Monopoles 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 monopole 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 20 feet in the public right-of-way. 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 electric transmission tower) 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 playfield, ballfield, or stadium light. 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.
Building Attached	The equipment for roof-mounted antennas within the OT 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.

19.68.210 Requirements for colocations.

(A) All wireless facilities colocating within the City of Anacortes must meet the following standards. This section does not apply to Eligible Facilities Requests.

(B) Colocations (as defined in Section 19.68.030(5)) are permitted on existing monopoles and 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 vertical 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 30 feet to accommodate the minimum separation requirement. The height of the existing facility with all increases in height due to colocations may not exceed the general height limitation for similar structures or buildings within the zone in which it is permitted or 120 feet, whichever is greater.

(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 within the public right-of-way, or within 30 feet of the existing structure outside of the public right-of-way, and maintain the design of the original structure, including any stealth or camouflage components. To determine feasibility, the applicant must submit an engineer's report regarding the feasibility of a proposed replacement.

(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 19.68.200.

19.68.220 Requirements for Non-Substantial Changes.

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 City or Federal noise regulations. A noise study must be submitted with any modification to antennas or equipment, other than like for like replacements.

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(B) No modification may violate the Federal radio-frequency emission standards.

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

19.68.230 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.

19.68.240 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.

19.68.250 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).

19.68.260 Security fencing.

All wireless service facilities must be protected from unauthorized entry. The perimeter of all wireless service facilities, other than small wireless facilities in the ROW, 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.

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19.68.270 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.

19.68.280 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.

19.68.290 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.

The Anacortes Municipal Code is current through Ordinance____and legislation passed through_____[Date].

19.68.300 SEPA.

Integration of environmental review. An application for a wireless service facility permit or wireless 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 5.38

PUBLIC UTILITY AND TELECOMMUNICATIONS

RIGHT-OF-WAY USE*

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5.38.010 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.

5.38.020 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.

5.38.030 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. A master permit does not include cable television franchises or permits.

(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 Federal regulations;

(E) The facilities are not located on Tribal lands, which means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities; 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;

(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. The term does not include a utility pole, monopole, street pole, or tower.

(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.

5.38.040 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.

5.38.050 Optional pre-application.

An applicant may submit materials up to thirty (30) days in advance of an application for a construction permit or master permit. The information submitted along with a pre-application may include the following information:

- (1) The name and address of the applicant;
- (2) Identification of all carriers using the facility;
- (3) The type of facility proposed;
- (4) Preliminary engineering plans, specifications, and maps of the facilities to be located within the public right-of-way;
- (5) Detailed construction plans demonstrating compliance with all applicable City codes and construction specifications, including the City's Engineering Standards;
- (6) 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;
- (7) A brief description of non-confidential, nonproprietary transmission medium that will be used to offer or provide such services;
- (8) 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;
- (9) 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;
- (10) The area or areas of the City the applicant desires to serve and a schedule for building out (offering service to) the entire area covered by the master permit;
- (11) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements; and/or
- (12) 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.

5.38.060 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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
- (12) 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.
- (13) 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) Applications for Small Wireless Facilities may be submitted in batches, which may encompass up to five separate applications filed at the same time, each for one or more sites, *or* a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications.

(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.

5.38.070 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 area encompassed by the master permit;
- (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) Proof of compliance with the other provisions of this Chapter, including but not limited to the indemnity, insurance, and bond requirements.
- (10) 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)~~ Applications for Small Wireless Facilities may be submitted in batches, which may encompass up to five separate applications filed at the same time, each for one or more sites, *or* a single application covering up to five sites, unless the City agrees to a larger number based upon its capacity to review additional applications.

(E) 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.

5.38.080 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

The City of Anacortes Municipal Code is current through Ordinance _____ and legislation passed through _____, 2018.

Commented [KA11]: The FCC Order has no limit on the number of batches that may be submitted. Contract staff can be added to process larger batches, if needed. That cost can be passed on to the applicant to make the review cost neutral to the city.

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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.

5.38.090 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	Written Decision due within 90 days.

	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
					she exceed the timeframes for review set forth in this table.	

5.38.100 Construction permit approval.

(1) The City Engineer shall review construction permits as follows:

Optional Pre-Application Meeting	Yes
Notice of Application	No
Comment Period	None
Recommendation By	None
Pre-Decision Open-Record Hearing	No
Closed-Record Decision Hearing	No
Decision By	City Engineer
Notice of Decision	No

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

(8) 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.

(9) 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.

5.38.110 Master permit approval.

(1) The City Council shall review the master permit application as follows:

Optional Pre-Application Meeting	Yes
Notice of Application	Yes
Comment Period	14 days
Recommendation By	None
Pre-Decision Open-Record Hearing	Yes, before City Council
Closed-Record Decision Hearing	No
Decision By	City Council
Notice of Decision	Yes

(2) 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.

(3) 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.

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

(5) 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 the right 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.

5.38.120 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.

5.38.130 Nondiscrimination.

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

5.38.140 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 the area covered by the master permit 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.

5.38.150 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.

5.38.160 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.

5.38.170 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.

5.38.180 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.

5.38.190 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.

5.38.200 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.

(F)

(G) Upon Permittee's removal of all facilities from the right of way and expiration of the agreement, permits and/or licenses, the city shall refund the balance remaining in this fund, including any accrued interest, to the Permittee within 14 days.

(H)

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Commented [KA12]: Allowing the city to retain the balance of these funds would be an unearned windfall.

5.38.210 Performance bond.

A performance bond written by a corporate surety acceptable to the City Engineer equal to at least 150 percent of

The City of Anacortes Municipal Code is current through Ordinance _____ and legislation passed through _____, 2018.

Anacortes Municipal Code

Chapter 5.38 PUBLIC UTILITY AND WIRELESS

TELECOMMUNICATIONS RIGHT-OF-WAY USE*

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

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The City of Anacortes Municipal Code is current through Ordinance _____ and legislation passed through _____, 2018.

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.

5.38.220 Insurance.

Commented [KA13]: Request the option to self insure.

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 policies, 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.

5.38.230 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.

5.38.240 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.

5.38.250 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.

5.38.260 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 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.

5.38.270 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 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.

5.38.280 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.

5.38.290 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.

5.38.300 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.

5.38.310 Joint use of poles.

(A) All wireless facilities 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.

5.38.320 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.

5.38.330 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.

5.38.340 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.

5.38.350 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.

5.38.360 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.

5.28.370 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.

5.38.380 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 Chapters 15.32 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.

5.38.390 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.

5.38.400 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.

5.38.410 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.

5.38.420 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.