



Planning Commission  
Meeting:  
First Wednesday of  
every Month @ 7:00pm

Planning & Community  
Development  
Department

1812 Main Street  
Lake Stevens, WA  
98258 (425) 622-6430  
[www.lakestevenswa.gov](http://www.lakestevenswa.gov)

Municipal Code

Available online:  
[www.codepublishing.com/WA/LakeStevens/](http://www.codepublishing.com/WA/LakeStevens/)

## **PLANNING COMMISSION AGENDA**

**Regular Meeting Date: 12/5/2018**

### **CALL TO ORDER: 7:00pm**

Pledge of Allegiance

### **ROLL CALL**

### **GUEST BUSINESS**

### **ACTION ITEMS**

1. Approval of minutes for November 7, 2018

### **DISCUSSION ITEMS**

1. 2019 Work Program Comm. Dev. Director Wright
2. Briefing: Wireless Communication Facilities Regulations Planning Manager Machen

### **COMMISSIONER REPORTS**

### **PLANNING DIRECTOR'S REPORT**

### **ADJOURN**

#### ***SPECIAL NEEDS***

*The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact City of Lake Stevens ADA Coordinator, at (425) 622-9419 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service.*

**PLANNING COMMISSION REGULAR MEETING MINUTES**

Community Center  
1808 Main Street, Lake Stevens  
Wednesday, November 7, 2018

CALL TO ORDER: 7:00 pm by Chair Janice Huxford

MEMBERS PRESENT: Janice Huxford, Jennifer Davis, Tracey Trout, Vicki Oslund, Linda Hoult, Steve Ewing and John Cronin

MEMBERS ABSENT: None

STAFF PRESENT: Community Development Director Russ Wright and Clerk Jennie Fenrich

OTHERS PRESENT: Councilmember Petershagen

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**Excused Absence:** None

**Guest business.** None

**Action Items:**

1. Commissioner Hoult made a motion to approve the October 17, 2018 minutes as amended. Commissioner Ewing seconded. Approved 7-0-0-0.

**Public Hearing:**

Chair Janice Huxford asked for a motion to open the public hearing on Critical Areas. Commissioner Hoult made the motion and Commissioner Ewing seconded. Motion passed 7-0-0-0.

**Staff Presentation-**

Community Development Director Russ Wright gave a staff presentation of the Critical Areas regulations. He gave a history of this process up to this point. Department of Ecology has asked to update definitions for hydrant soils and the term qualified professional. The stormwater manual has been updated to reflect the definition changes. Department of Ecology has also differentiated wetland and critical areas as they are two different things. Director Wright reported the Department of Ecology also has recommended alternative mitigations for new wetland banking criteria. Innovated design was established which will enhance habitat function. Director Wright said he declined to change the wetland guidelines, as the City of Lake Stevens had done this two years ago. Department of Ecology is requiring pesticide management to include inert and non-toxic pesticides. Tree mitigation is being suggested to be 3:1 ratio or 1:1.5 if the replacement tree is 4" to 6" tall and is a native Evergreen.

**Commissioner's questions for staff-** Commissioner Trout asked how the determination of lakeside wetland drainage will be determined to be mitigated in an equitable way. Director Wright responded that mitigation sequencing is in place to determine the most effective way to mitigate. Wetland biologists will determine the most relevant category for mitigation. Commissioner Huxford asked if there were any changes to SEPA requirements since this current report was adopted. Director Wright replied there hasn't been. Commissioner Huxford asked about how much buildable land is in the current City limits and if it included residential and commercial. Director Wright replied there is approx.400 acres. Commissioner Davis asked for clarification on stormwater management facilities setbacks. Director Wright explained this is speaking to lower level wetland categories that are most prevalent and will bring the highest recharge to the wetlands.

**Comments from the audience-** Angie Sievers from Master Builders Association would like an opportunity to review and comment in writing before this is taken to council. Director Wright replied this draft is very similar to the draft shown to the Commission in 2017. Councilmember Petershagen asked the Commission to discuss Table 14.88 buffer requirements. Councilmember Petershagen had comments on critical areas and increasing buffers.

**Commission Action-**Commissioner Ewing made a motion to forward the Planning Commission's recommendation to City Council to approve the Critical areas amendment with an additional public comment opportunity. Commissioner Hoult seconded it. The motion carried 6-0-0-1.

#### **Commissioner Reports**

Commissioner Hoult reported there are two new Eagle Scouts in our community as she sits on the local Eagle Scout Board. Commissioner Huxford reminded the Commission that we are nearing the end of the year and we will need to appoint a new Chairperson and Vice Chair.

**Planning Director Report:** none

#### **Future Agenda Items**

Joint Council/Planning Commission meeting is December 18<sup>th</sup> at 6:00pm.

**Adjourn.** Motion to adjourn by Commissioner Hoult, seconded by Commissioner Ewing. Motion carried 7-0-0-0. Meeting adjourned.

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Janice Huxford, Chair

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Jennie Fenrich, Clerk, Planning &  
Community Development

DRAFT



## Staff Report City of Lake Stevens Planning Commission

Planning Commission Briefing  
Date: **December 5, 2018**

**SUBJECTS:** 2019 Long Range Work Program

**CONTACT PERSON/DEPARTMENT:** Russ Wright, *Community Development Director*

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**SUMMARY:** Discuss proposed 2019 Long Range Work Program

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**ACTION REQUESTED OF PLANNING COMMISSION:** No action requested at this time.

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Earlier this year staff presented a tentative 2019 Long Range Work Program to the Planning Commission. The work program has been updated for your consideration. The major projects for completion in the first part of the year include four carry over projects:

- **Critical areas update** – City Council to adopt updates to the city’s critical areas based on model ordinance and updates to the DOE wetland ratings;
- **Wireless facilities** – the Planning Commission and City Council to review updates to the city’s wireless facility codes to comply with the Spectrum Act and consider new regulations in preparation of small cell network technology;
- **Fences and retaining walls** – the Planning Commission and City Council to review updates to the city’s regulations for fences and walls considering safety, aesthetics and development impacts; and
- **Private roads and streets** – the Planning Commission and City Council will review updates to the city’s road standards to address private roads and access tracts, parking requirements on small lots and related issues.

The Planning Commission and City Council will also consider several new or continued zoning projects over the year, including:

- **Zoning code updates** – this project entails a comprehensive overview of the city’s zoning standards in coordination with a stakeholder committee looking at in-fill development and varied housing options;
- **Permanent design guidelines** – the city will consider permanent design guidelines to replace the interim regulation in place following the disbandment of the Design Review Board;
- **Permitted use table** – this project would simplify the current permitted use table;
- **Code clean up** – this project would be a comprehensive overview of the zoning code to identify inconsistencies and clarify any ambiguous sections; and
- **Content based signs** – the city needs to review its sign code to ensure that it is content neutral to comply with recent court rulings. Other minor modifications to the sign code may be considered.

The Planning Commission and City Council will also consider amendments to the Comprehensive Plan and related documents in 2019 that include a review of the Land Use, Parks and Capital Facilities Elements, the mandatory Shoreline Update. Staff is working with a consultant to provide a current buildable lands analysis and recommendations on potential Urban Growth Expansions.

Finally, staff will also continue to process annexations under review in coordination with petitioner, City Council and Snohomish County.

**ATTACHED:** 2019 Work Program



## 2019 Long Range Work Program

Lake Stevens 2019 Long Range Work Program					
Amendments	1 <sup>st</sup> quarter	2 <sup>nd</sup> quarter	3 <sup>rd</sup> quarter	4 <sup>th</sup> quarter	Status
<b>Zoning Code (carry over)</b>					
1. Critical Areas Update	CC				PH w/ City Council
2. Wireless Facilities	PC / CC				Under Review
3. Fences / Retaining walls	PC / CC				Under Review
4. Private Roads / Streets	PC	CC			Under Review
<b>Zoning Code</b>					
1. Zoning Updates	PC	PC / CC			
2. Permanent Design Guidelines	PC	CC			
3. Permitted Use Table			PC	CC	
4. Code Clean Up			PC	CC	
5. Content Based Sign Code					Schedule TBD
<b>Comprehensive Plan</b>					
1. Annual Docket a. Land Use Element b. Parks Element c. Capital Facilities d. UGA Zoning e. Maps – new city boundaries	PC	PC / CC			
2. SMP - Mandated periodic review	PC	PC / CC			Under Review – to be completed by June 2019
3. Buildable Lands / RUTA Analysis	PC	PC / CC			
<b>Annexations</b>					
1. Adrian Petition	CC				60% petition received
2. Machias Industrial Petition					10% petition received Schedule TBD
3. NE Island					Schedule TBD
4. SE Island	CC				
5. Placeholder					

1st Quarter January through March

2nd Quarter April through June

3rd Quarter July through September

4th Quarter October through December



Staff Report  
City of Lake Stevens  
Planning Commission  
Briefing  
Date: **December 5, 2018**

**SUBJECT:** LUA2018-0108- City initiated code amendment regarding Wireless Communications

**CONTACT PERSON/DEPARTMENT:** Joshua Machen, *Planning Manager* / Russ Wright, *Community Development Director*

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**SUMMARY:**

The city has drafted new and revised regulations regarding wireless communication facilities. This briefing provides the new drafted wireless communication code updates.

Specifically, the attached draft ordinance addresses macro facilities, eligible facility modifications and small cell facility deployments.

The attached draft regulations are contained in a new Chapter 14.62 -Wireless Communication Facilities.

**ACTION REQUESTED OF PLANNING COMMISSION:**

Review the following attachments, then set a date for a public hearing:

- A. New proposed chapter 14.62. - Wireless Communication Facilities
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**Background:**

A little over a year ago, the city joined a consortium of cities working with the Law offices of Ogden Murphy and Wallace to analyze and draft model ordinances related to wireless communication facilities and specifically provisions for small cell deployments.

The FCC has recently passed rule making that requires small cell deployments to be processed in an expeditious manner and to be treated similarly to other utilities using the public right-of-way. The city is using the model ordinance prepared by the consortium along with review of other cities ordinances to draft comprehensive regulations that properly address, all forms of wireless communication deployments.

Staff previously presented to you draft regulations regarding standard wireless communication facilities and eligible facility modifications and we discussed the issues regarding small cell facility deployments and franchise agreements. These regulations will allow the city to manage its rights-of-way in a thoughtful manner. The small cell deployment process balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the city while complying with the requirements of state and federal law.

**Purpose of Code Amendment**

Bring the city's codes and regulations into compliance with the Spectrum Act and the adopted FCC rules regarding the permitting and siting of wireless communication facilities. Modify the city regulations to recognize the changing technology related to small-cell facility networks and put into place regulations

defining small cell facilities and permitting procedures to allow their development along with proper aesthetic and concealment regulations. The code amendments also address provisions for franchise agreements for wireless providers to allow deployment of small cell facility networks within the city rights-of-way.

The following are the key issues addressed by the proposed code amendments:

- **Definitions**-add or update definitions for macro and small wireless facilities
- **Shot Clocks**-provisions to ensure compliance with FCC permit processing timelines
- **Eligible Facility Modifications**-regulations in compliance with the "Spectrum Act" which provides for expedited review of wireless facilities replacing existing facilities, or when co-locating on structures with existing wireless communication facilities.
- **Macro Facilities**- provisions to allow new antennas to be deployed on existing structures through an administrative conditional use permit, while requiring a full conditional use permit for new towers and structures. The new provisions also contain landscaping and screening requirements for new facilities.
- **Small Cell Facilities**-small cell facilities will now be allowed in all zones and within the rights-of-way with a franchise agreement. Drafted provisions contain special design considerations for our design and underground districts.
- **Concealment Standards**-the drafted regulations contain multiple standards for the concealment of small cell facilities, to name a few, all wires are to be internal to the mounting pole if technologically feasible, antennas are to be shrouded and or painted to blend in with the light or utility pole upon which they are being deployed. There are also design provisions for when small cells are being attached to buildings.

### ***Next steps***

Bring a final draft of the new wireless regulations to the Planning Commission in January. Hold a public hearing and make a recommendation to the City Council.

### ***Attachments***

- A      Drafted new chapter LSMC 14.62



**Chapter 14.08 BASIC DEFINITIONS AND INTERPRETATIONS**

Sections:

**14.08.010 Definitions of Basic Terms****14.08.020 Recodified****14.08.010 Definitions of Basic Terms.**

The following definitions are being deleted from this chapter and are being integrated into a new chapter LSMS 14.62

~~Wireless Communication Tower. A support structure to which is attached equipment used for the transmission and/or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, and equipment cabinet.~~

~~Wireless Communications. Any personal wireless services as defined in the Telecommunications Act of 1996 or as may be subsequently amended. This includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed.~~

**Chapter 14.40 PERMISSIBLE USES**

LSMC 14.40.090 "More Specific Use Controls" (Table 14.40-I: Table of Permissible Uses by Zones) is hereby amended to modify section "18.000 Towers and Structures" to "18.000 Wireless Communication Facilities, Towers and Structures" and to modify the listed uses under this section as shown below, all other uses shall remain in full force and effect, unchanged:

TABLE 14.40-I: TABLE OF PERMISSIBLE USES BY ZONES

A blank box indicates a use is not allowed in a specific zone. Note: Reference numbers within matrix indicate special conditions apply. P - Permitted Use; A - Administrative Conditional Use; C - Conditional Use (See Section 14.40.020 for explanation of combinations)												
USE DESCRIPTIONS		SR	WR	UR	HUR	MFR	LB	MU <sup>1</sup>	PBD <sup>5</sup>	LI	GI	P/SP
18.000	<u>WIRELESS COMMUNICATION FACILITIES, TOWERS AND RELATED STRUCTURES</u>											
18.100 <sup>42</sup>	<u>Small Cell Facilities<sup>12</sup>/ Towers and Antennas 50 Feet Tall or Less</u>	P	P	P	P	P	P	P	P	P	P	P
18.200 <sup>42</sup>	<u>Macro Facilities (e.g., new tower, pole or structure)<sup>12</sup> / Towers and Antennas More Than 50 Feet Tall and Receive Only Earth Stations</u>	AC	AC	AC	AC	AC	A	A		A	A	A
18.300	<u>Macro Facilities Co-location on existing buildings/structures</u> <del>Wireless Communications Facilities</del> <sup>13</sup>	CA	CA	CA	CA	CA	AA	AA		AA	AA	AA
18.400	<u>Eligible Facility Modifications</u>	P	P	P	P	P	P	P		P	P	P

12 ~~Excludes wireless communication facilities. See Use Class 18.300~~ See regulations in Chapter 14.62 LSMC.

13 ~~No land use permit is required in certain situations. See Sections 14.44.360(d) and (e). See specific regulations in LSMC 14.62.00?~~

## **Chapter 14.44 SUPPLEMENTARY USE REGULATIONS**

### **~~14.44.360 Wireless Communication Towers and Antennas.~~**

~~(a) No wireless communication tower may be located within 1,000 feet of an existing or previously approved tower.~~

~~(b) No wireless tower may be located within 1,000 feet of the shoreline of Lake Stevens.~~

~~(c) All new towers shall be designed to reasonably accommodate future installation of a second array.~~

~~(d) A new antenna or array placed on a previously approved tower is exempt from further land use permit approvals, provided it does not add more than 25 feet to the height of the tower.~~

~~(e) A new antenna or array placed on an existing structure such as a water tank or building is exempt from a land use permit, provided the new antenna or array extends no higher than 25 feet above the top of the structure to which it is being added.~~

~~(f) Speculative wireless towers are prohibited. As part of the land use permit process, the applicant shall demonstrate that there is a licensed provider of telecommunication services contractually committed to using the proposed pole to provide wireless communication services.~~

~~(g) Screening of the base of the pole, including any security fences and equipment cabinets, shall be done in a manner as to blend into the site so as the screening does not to call undue attention itself. Unless otherwise required by the Federal Aviation Administration, wireless facility support structures shall be of a neutral color to minimize visibility.~~

~~(h) Should the communications element of a tower be abandoned and cease functioning for a period of one year, the tower shall be removed from the site. At the time of application, a notarized statement from the property owner shall be provided to the City and recorded against the property which affirms that:~~

~~1. The signee is the owner; and~~

~~2. He or she understands that if the use is abandoned the tower must be removed within one year; and~~

~~3. If the City takes action to enforce this rule, the property owner, heirs or successors are ultimately responsible for the removal. (Ord. 608, Sec. 3, 1999)~~

## **New:**

### **Chapter 14.62 Wireless Communication Facilities**

Sections:

#### **Part I. General Provisions**

14.62.010 Purpose

14.62.020 Definitions

14.62.030 General Provisions

14.62.050 Wireless Communication Facility Permit Process/Processing Timelines.

14.62.060 Exclusions

14.62.070 Application Submittal Requirements

14.62.080 Completed Application – Determination – Tolling.

14.62.090 Electromagnetic Field (EMF) Standards Compliance.

14.62.100 Permit Enforcement.

14.62.110 Reservation of Authority

14.62.120 Federal Regulatory Requirements

**Part II. Macro Wireless Communication Facilities-Towers and Antennas**

14.62.130 Purpose.

14.62.140 Procedure.

14.62.0150 Macro Wireless Communication Facility Regulations

14.62.160 Prioritized Locations

14.62.170 Development Standards

14.62.180 SEPA Review Wireless Communication Facilities

**Part III. Eligible Facility Modifications (EFM)**

14.62.190 Purpose

14.62.200 Applicability – Relationship to other Rules and Regulations

14.62.210 Substantial Change Criteria

**Part IV. Small Cell Facilities**

14.62.220 Purpose and Intent

14.62.230 Review Process

14.62.240 Right-of way Permit for Small Cells and Deviations.

14.62.250 Amendments to the Franchise Agreement.

14.62.260 Design and Concealment Standards for Small Wireless Deployments

14.62.270 Design Zones for Small Wireless Facilities

14.62.280 New Poles in the Rights-of-way for Small Wireless Facilities and Installations in a Design Zone.

14.62.290 Franchise Application.

14.62.300 Implementation—Right-of-way permits for small cell deployment.

14.62.310 Ground-Mounted Equipment—ADA Compliance Required.

14.62.320 Underground Districts.

14.62.330 Replacement Utility Pole — Street Lighting.

**Part I. General Provisions**

**14.62.010 Purpose.**

This chapter defines the regulations for placing, developing, permitting and removing all types of wireless communication facilities (“WCF”) including macro and small wireless facilities. It also provides adequate siting opportunities by identifying a range of locations and options that support wireless communications technology. This chapter encourages siting facilities on existing buildings or structures, collocating providers on single structures, maintaining neighborhood appearances and reducing visual clutter in the city. Specific purposes include:

- (a) Minimizing potential adverse visual, aesthetic, and safety impacts of wireless facilities;
- (b) Establishing objective standards for the placement of wireless facilities;
- (c) Allowing competition that does not unreasonably discriminate among providers of functionally equivalent services;

- (d) Encouraging the design of wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments; and
- (e) Encouraging the collocation or attachment of small wireless facilities on existing support structures to help minimize the total number and impact of such structures throughout the community.

**14.62.020 Definitions.**

- (a) “Antenna” means any exterior apparatus designed for telephone, radio, data, internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, utility pole, building or other structure to provide wireless services.
- (b) “Base Station” (this definition only applies to EFM) 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 as defined herein or any equipment associated with a tower. Base Station includes, without limitation:
  - (1) 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.
  - (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).
  - (3) Any structure other than a tower that, at the time the relevant application is filed with the City of Lake Stevens under this section, supports or houses equipment described in paragraphs (b)(1)-(b)(2) that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the City of Lake Stevens under this section, does not support or house equipment described in (b)(1)-(2) of this section.

- (c) “Co-location” means mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for mounting or installing an antenna facility on that structure. Provided that, for purposes of Eligible Facilities Requests, “co-location” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (d) “Electromagnetic field” or “EMF” means the field produced by the operation of equipment used in transmitting and receiving radio frequency signals.
- (e) “Eligible Facilities Request” means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
  - (1) Collocation of new transmission equipment;
  - (2) Removal of transmission equipment; or
  - (3) Replacement of transmission equipment.
- (f) “Eligible support structure” means any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City of Lake Stevens under this section.

- (g) "Equipment facility" means any structure used to house electronic equipment, cooling systems and back-up power systems associated with a WCF, including shelters, enclosures, cabinets and other similar structures.
- (h) "Existing" means a constructed tower or base station is existing for purposes of this section 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 because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.
- (i) "Macro facility" means is a large wireless communication facility that provides radio frequency coverage for a cellular telephone network. Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cell facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers.
- (j) "Site" for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- (k) "Small wireless facilities" are wireless communication facilities that meet each of the following conditions:
  - (1) The facilities (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
  - (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined above), is no more than three cubic feet in volume; and
  - (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.
- (l) "Structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).
- (m) "Substantial Change" means a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
  - (1) For towers, other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater;
  - (2) 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;
  - (3) For any eligible support structure, it involves installation of more than the standard number of

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

- (4) It entails any excavation or deployment outside the current site;
  - (5) It would defeat the concealment elements of the eligible support structure; or
  - (6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified under the definition of substantial change in this section.
- (n) "Transmission Equipment" means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (o) "Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
- (p) "Unified enclosure" means a small wireless facility providing concealment of antennas and equipment within a single enclosure.
- (q) "Utility pole" means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.
- (r) "Wireless communication facility" or "WCF" means an unstaffed facility for the transmission and/or reception of radio frequency, microwave or other signals for commercial communications purposes, including and typically consisting of antennas, equipment shelter or cabinet, transmission cables, a support structure required to achieve the necessary elevation, and reception and transmission devices and antennas.
- (s) "Wireless communication tower" see definition for "tower" in this chapter.
- (t) "Wireless communication services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

#### **14.62.030 General provisions.**

- (a) Wireless communication facilities shall not be considered nor regulated as essential public facilities.
- (b) Small wireless facilities located outside of the public rights-of-way may be either a primary or a secondary use. A different use of an existing structure on the same lot shall not preclude the installation of a small wireless facility.
- (c) Small wireless facilities located within the public right-of-way pursuant to a valid franchise are out

right permitted uses in every zone of the City but still require a land use and right-of-way permit.

**14.62.040 Permit required.**

- (a) A land use permit per LSMC 14.40-I Table of Permissible uses by Zones is required in addition to a building permit for the location, installation or construction of any wireless communication facility (WCF) and for any modification to an existing WCF.
- (b) Television and satellite dish antennas are exempt from a permit. See Section 14.62.060 LSMC below.

**14.62.050 Wireless Communication Facility Permit Process/Processing Timelines.**

The following table identifies the permit type and processing timelines for wireless communication

<u>Facility Type<sup>i</sup></u>	<u>Permit Type</u>	<u>Timeframe for Review: (tolled from submittal)</u>	<u>Days to Determine Application Completeness:</u>
Eligible Facility Modification (EFM)	Type I	60-days	30-days <sup>ii</sup>
Small Cell Facility on Existing Structure	Type I	60-days	30-days <sup>iii</sup>
Small Cell Facility on New Structure	Type II	90-days	30-days
Macro Wireless Communication Facility - Collocation	Type II	90-days	30-days
Macro Wireless Communication Facility- non-collocation (e.g., new tower, pole, structure)	Type III	150-days	30-days

facilities:

**Table 14.62.050A Wireless Communication Facility Permit Process/Processing Timelines**

- i. See definitions in this chapter for facility types (LSMC 14.62.020).
- ii. See LSMC 14.62.080
- iii. See LSMC 14.62.080

**14.62.060 Exclusions.**

The following antennas and related facilities are expressly excluded from the provisions of this chapter.

- (a) Ham or amateur radio vertical tower antennas and related facilities.
- (b) Television and satellite dish antennas.

**14.62.070 Application submittal requirements**

- (a) This section sets forth the submittal requirements for all Wireless Communication Facilities (WCF) including eligible facilities modifications (EFM). The purpose of the submittal requirements is to ensure that the city has all information and documentation that is reasonably necessary to determine

if the applicant's proposal will meet regulations or if facilities modification will substantially change the physical dimensions of an eligible support structure. The submittal requirements are not intended to require the applicant to establish the need for the proposed WCF or modifications or to justify the business decision to propose such modifications.

- (b) Submittal Requirements. No WCF or EFM application shall be deemed complete unless it is in writing; accompanied by the applicable application and review fee; includes the required submittals; and attested to by the authorized person certifying the truth and accuracy of the information provided in the application. The application shall include the following submittals, unless waived by the approval authority.
- (1) Contact information for the authorized person;
  - (2) Contact information for the applicant;
  - (3) Ownership information (if the proposal is not within public right-of-way);
  - (4) Specific locational information including GIS coordinates of all proposed WCF;
  - (5) Whether and where small cell facilities are to be located on existing utility poles including city-owned light standards;
  - (6) Whether the deployment will utilize replacement utility poles, new poles, towers, and/or other structures and where such replacement will take place;
  - (7) Detailed schematics and visual renderings of the facilities.
  - (8) Conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified regardless of whether these facilities are constructed by the applicant or leased from an infrastructure provider.
  - (9) A site/landscaping plan showing the specific placement of the WCF on the site; showing the location of existing structures, trees and other significant site features; and indicating type and locations of plant materials used to screen WCF components;
  - (10) Documentation verifying that the proposed WCF complies with any applicable regulations and specifications in accordance with the Federal Aviation Administration (FAA);
  - (11) Documentation that demonstrates that there is a licensed provider of telecommunication services contractually committed to using the proposed pole to provide wireless communication services.
  - (12) Property owner signed notarized statement regarding abandonment-The statement shall affirm the following:
    - (i) The signee is the owner; and
    - (ii) He or she understands that if the use is abandoned the tower must be removed within one year; and
    - (iii) If the City acts to enforce LSMC 14.62.170 (p), the property owner, heirs or successors are ultimately responsible for the removal.
  - (13) Certification of an RF Engineer- regarding FCC electromagnetic field compliance.

**Additional submittal Requirements for EFM's**

- (10) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act;
- (11) If the applicant is not the owner or person in control of the eligible support structure and/or site: An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facilities modification. If the eligible support structure is located in a public right-of-way, the applicant must also attest that applicant has authorization



to install, maintain and operate transmission equipment in, under and above the public right-of-way;

- (12) If the applicant proposes a modification that will result in an increase in height of the eligible support structure: Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure (a) as originally constructed and granted approval by the city or other applicable local zoning or similar regulatory authority; or (b) as of the most recent modification received by the city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater;
- (13) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to preexisting restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the city code, or an ordinance or a municipal code of another local government authority: A copy of the document (e.g., CUP) setting forth such preexisting restrictions or requirements together with a certification that the proposed facilities modification conforms to such restrictions or requirements; provided, that such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure;
- (14) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to preexisting concealment restrictions or requirements, or was constructed with concealment elements: Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. 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;
- (15) 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;
- (16) If the applicant proposes a modification to an eligible support structure that will (a) include any excavation; (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower; or (c) would protrude from the edge of a non-tower eligible support structure: A description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation and dimensions of the new or replacement transmission equipment. 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 to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure;
- (17) If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement: A technical report by a qualified engineer accredited by the state of Washington, demonstrating that the structural enhancement is performed in

connection with and is necessary to support the proposed collocation, removal, or replacement of transmission equipment and conforms to applicable code requirements. The city may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of necessity;

- (18) If the applicant proposes a modification to a tower: A stamped report by a Washington State-registered professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation, EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:
  - (i) The number and type of antennas that can be accommodated;
  - (ii) The basis for the calculation of capacity; and
  - (iii) A written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standards.
  - (iv) The city may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance;
- (20) If the applicant proposes a modification to a base station: A stamped report by a Washington State-registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes;
- (21) If the applicant proposes a modification requiring alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site: A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and 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 co-located 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.
- (c) 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 proposed WCF or substantial change criteria related to an EFM. A waiver, to be effective, must be in writing and signed by the approval authority.
- (d) When Received. An WCF or EFM application, and any supplemental submittals, shall be deemed received by the city upon the date such application or supplemental submittal is filed with the

planning and community development department. An application, and any supplemental submittals, must be filed in person during regular business hours of the city and must be accompanied by the applicable permit review fee(s). Any application received by the city without contemporaneous payment, or deposit, of the applicable permit review fees will be rejected.

**14.62.080 Completed Application – Determination – Tolling.**

- (a) Determination of Completeness. The approval authority shall, within 30 days of receipt of the application, review the application for completeness. An WCF or EFM application is complete if it includes the applicable permit review fee(s) and contains all the applicable submittal requirements set forth at LSMC 14.62.070 (b), unless waived by the approval authority pursuant to LSMC 14.62.070 (c).
- (b) Incomplete Application. The approval authority shall notify the applicant within 30 days of receipt of the application that the application is incomplete. Such notice shall clearly and specifically delineate all missing documents or information.
- (c) Timeframe for Review. Depending upon the type of application, a decision shall be rendered by the City of Lake Stevens within the periods specified in Table 14.62.0?
- (d) Tolling of the Timeframe for Review. The review period begins when the application is filed and may be tolled only by mutual agreement by the City of Lake Stevens and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
  - (1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.
  - (2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City notice of incompleteness.
  - (3) Following a supplemental submission, the City will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (e) Interaction with Section 332(c)(7). If the City determines that the applicant's request is not covered by Section 6409(a) as delineated under this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under Section 332(c)(7), pursuant to the limitations applicable to other Section 332(c)(7) reviews.
- (f) Failure to Act on an Eligible Facility Modification (EFM) Request. In the event the City fails to approve or deny a request for an EFM approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

- (g) Remedies. Applicants and the City may bring claims related to Section 6409(a) to any court of competent jurisdiction.

**14.62.090 Electromagnetic field (EMF) standards compliance.**

- (a) All WCF shall be operated in compliance with federal standards for EMF emissions.
- (b) Radio Frequency (RF) Certification
  - (1) The applicant shall submit an RF certification signed by an RF engineer with knowledge of the proposed project affirming that the WCF deployment will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the WCF and associated wireless backhaul will operate.
  - (2) An existing franchisee applying for a right-of-way permit for small cell deployment shall provide an RF certification for all facilities included in the deployment which are to be installed by the franchisee.
  - (3) If facilities which produce RF radiation are necessary to the WCF deployment and will be provided by another franchisee, then the WCF deployment in the initial franchise or in a subsequent right-of-way permit shall be conditioned on an RF certification showing that the cumulative impact of the RF emissions from the entire installation meets federal requirements.
  - (4) If on review of a registered complaint the city finds that the WCF interferes with FCC approved devices, the city may revoke or modify the permit. The applicant shall be given a reasonable time based on the nature of the problem to correct the interference. If the permit is revoked, then the facility shall be removed.

**14.62.100 Permit enforcement.**

The planning and community development director, or designee, shall enforce the provisions of this chapter under the code enforcement provisions of the Lake Stevens Municipal Code.

**14.62.110 Reservation of Authority.**

Nothing herein is intended or shall operate to waive or limit the city's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

**14.62.120 Federal Regulatory Requirements.**

- (a) These provisions shall be interpreted and applied in order to comply with the provisions of federal law. By way of illustration and not limitation, any small cell facility which has been certified as compliant with all FCC and other government regulations regarding the human exposure to radio frequency emissions will not be denied on the basis of RF radiation concerns.
- (b) Wireless communication facilities shall be subject to the following requirements to the extent that such requirements (i) do not unreasonably discriminate among providers of functionally equivalent services, and (ii) do not have the effect of prohibiting personal wireless services within the City.

## **Part II. Macro Wireless Communication Facilities-Towers and Antennas**

### **14.62.130 Purpose.**

The purpose of this section is to set out regulations related to the deployment of Macro Wireless Communication Facilities (WCF), including new towers and antennas throughout the City.

### **14.62.140 Procedure.**

New macro WCF that include a new tower or new structure shall be processed as a Type III Review/Conditional Use Permit consistent with the procedures in Chapter 14.16B LSMC. Co-location of new macro WCF that do not qualify as an eligible facility modification under Chapter 14.62 Part III LSMC, shall be processed as a Type II Review/Administrative Conditional Use Permit consistent with the procedures in Chapter 14.16B LSMC.

### **14.62.0150 Macro Wireless Communication Facility Regulations.**

- (a) Construction or installation of the WCF must commence within one year from the date of the permit, with opportunity for a one-year extension; otherwise, the permit shall be revoked without further action of the city and the rights and privileges appurtenant to the permit shall be void;
- (b) Permittee shall allow co-location of proposed WCF on the permittee's site, unless the permittee establishes to the city's satisfaction that co-location will technically impair the existing permitted use(s) to a substantial degree;
- (c) Permittee shall maintain the WCF in a state of good repair and to maintain or replace, if necessary, vegetation and landscaping required as a condition of approving the permit;
- (d) Permittee shall notify the city of any sale, transfer, assignment of a site or WCF within 60 days of such event; and
- (e) Permittee shall comply with the provisions of this title and all other applicable city ordinances and rules and regulations.

### **14.62.160 Prioritized locations.**

The following sites are prioritized in order of preference for locating proposed macro WCF and permits shall be issued so that WCF will be located on the highest priority site feasible:

- (a) Collocation on a tower or structure with other existing WCF.
- (b) Public buildings and structures located in nonresidential zones.
- (c) Buildings and structures in industrial, commercial and business zones.
- (d) Buildings and structures in residential zones not used entirely for residential uses; provided, that WCF will not be sited on vacant residential lots.

### **14.62.170 Development standards.**

All WCF shall be constructed or installed per the following development standards:

- (a) WCF must comply with applicable Federal Communications Commission (FCC), Federal Aviation Administration (FAA), state, and city regulations and standards;
- (b) A freestanding WCF shall not be allowed whenever an existing structure can meet technical and network location requirements;

- (c) No wireless communication tower may be located within 1,000 feet of an existing or previously approved tower.
- (d) No wireless tower may be located within 1,000 feet of the shoreline of Lake Stevens.
- (e) All new towers shall be designed to reasonably accommodate future installation of a second array.
- (f) Speculative wireless towers are prohibited. As part of the land use permit process, the applicant shall demonstrate that there is a licensed provider of telecommunication services contractually committed to using the proposed pole to provide wireless communication services.
- (g) Antennas shall be located, mounted and designed so that visual and aesthetic impacts upon surrounding land uses and structures are minimized, and so that they blend into the existing environment;
- (h) WCF must be screened or camouflaged employing the best available technology, such as compatible materials, location, color, and hollow flagpoles, and other tactics to minimize visibility of the facility from public streets and residential properties.
- (i) A freestanding WCF shall comply with all required setbacks of the zoning district in which it is located, unless it is located within the public right-of-way;
- (j) WCF shall be designed and placed or installed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures by:
  - (1) Using existing site features to screen the WCF from prevalent views; and
  - (2) Using existing site features as a background in a way that the WCF blends into the background;
- (l) Screening of the base of the pole, including any security fences and equipment cabinets, shall be done in a manner as to blend into the site so as the screening does not call undue attention itself.
- (m) A WCF shall be painted either in a nonreflective color or in a color scheme appropriate to the background against which the WCF would be viewed from most points within its viewshed, and in either case the color must be approved by the city as part of permit approval;
- (n) Equipment facilities shall be placed underground if applicable, or, if above ground, shall:
  - (1) Be screened from any street and adjacent property with fencing, walls, landscaping, structures or topography or a combination thereof.
  - (2) Unless otherwise required by the Federal Aviation Administration, wireless facility support structures shall be of a neutral color to minimize visibility.
- (o) As a condition of permit approval, the city may require the applicant to supplement existing trees and mature vegetation to screen the facility;
- (p) Should the communications element of a tower be abandoned and cease functioning for a period of one year, the tower shall be removed from the site. At the time of application, a notarized statement from the property owner shall be provided to the City and recorded against the property which affirms that:
  - (1) The signee is the owner; and
  - (2) He or she understands that if the use is abandoned the tower must be removed within one year; and
  - (3) If the City acts to enforce this rule, the property owner, heirs or successors are ultimately responsible for the removal.
- (q) Security fencing shall:
  - (1) Not exceed eight feet in height;
  - (2) Be screened from view using appropriate landscaping materials; and

- (3) If it is a chain-link fence, be camouflaged with appropriate techniques and painted or coated with a nonreflective color.

#### **14.62.180 SEPA Review Wireless Communication Facilities**

SEPA Review is required for new or replacement WCF unless exempt per WAC 197-11-800 (25).

### **Part III Eligible Facility Modifications (EFM's)**

#### **14.62.190 Purpose**

This section implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), as interpreted by the Federal Communications Commission's ("FCC" or "Commission") Acceleration of Broadband Deployment Report & Order, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

#### **14.62.200 Applicability – Relationship to other rules and regulations.**

(a) Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and notwithstanding any other provisions in the city code, the provisions of this chapter shall be the sole and exclusive procedure for review and approval of a proposed facilities modification which the applicant asserts is subject to review under Section 6409 (Spectrum Act). To the extent that other provisions of the city code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this chapter shall control. If any part of an application for project permit approval includes a proposed facilities modification, the proposed facilities modification portion of the application shall be reviewed under the provisions of this chapter. If an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409, such proposal shall not be subject to review under this chapter and may be subject to review under other applicable provisions of the city code.

(b) Nonconforming Structures. This section shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming or legal nonconforming structure at the time a completed eligible facilities modification application is filed with the city. To the extent that the nonconforming structures and use provisions of the city code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this chapter and shall not apply.

(c) Replacement of Eligible Support Structure. This chapter shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of a tower or base station.

(d) First Deployment – Base Station. This chapter shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within or upon, or attached to, the structure.

(e) Interpretation. Interpretations of this chapter shall be guided by Section 6409; the FCC eligible facilities request rules, the FCC's Report and Order, in regard to Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153.

(f) SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible facilities modification application are not subject to, and are exempt from, the requirements of RCW 43.21C.030(2)(c), if:

- (1) The proposed facilities modification would not increase the height of the eligible support structure by more than 10 percent, or 20 feet, whichever is greater; or
- (2) The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the structure more than 20 feet, or more than the width of the structure at the level of the appurtenance, whichever is greater;\* or
- (3) The authority to condition or deny an application pursuant to Chapter 43.21C RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.

\*Note: See RCW 43.21C.0384 and WAC 197-11-800(25).

#### **14.62.210 Substantial change criteria.**

A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 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;
- (b) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;
- (c) 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;
- (d) 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; and:
  - (1) It entails any excavation or deployment outside the current site;
  - (2) It would defeat the concealment elements of the eligible support structure; or
  - (3) 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 this section.



## **Part IV. Small Cell Facilities**

### **14.62.220 Purpose and Intent**

To manage its right-of-way in a thoughtful manner, the City of Lake Stevens has adopted this process for the deployment of small cell and microcell technology. The process balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the city while complying with the requirements of state and federal law. Service providers who seek to utilize the public right-of-way for small cell deployment to provide wireless communication, data transmission or other related services to the citizens of the city must have a valid franchise to provide the specific service seeking to utilize the right-of-way and a right-of-way permit to deploy the technology. Entities with franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall utilize the processes set forth in this chapter to deploy their technology and obtain design approval of specific installations. A right-of-way permit in addition to Land use permit is required for small wireless deployment under the franchise. An entity without a franchise shall apply for a consolidated permit which shall be processed concurrently as one master permit within the meaning of RCW 35.99.010(3) and 35.99.030. For entities with a valid franchise, see Section 14.62.240.

- (a) Nothing in this chapter revises or diminishes the rights and obligations of an existing franchise.
- (b) The term “small cell deployment” shall include the deployment of small cell facilities, microcells and small cell networks as those terms are defined by RCW 80.36.375.
- (c) Existing franchisees with franchises that do not specifically permit small cell and/or micro cell deployment shall be required to either amend their existing franchise or enter a new franchise with the city.

### **14.62.230 Review process.**

The following provisions relate to applications for a franchise or right-of-way permit for small cell deployments:

- (a) Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC Section 253 and 47 USC Section 332 and applicable case law. Applicants for franchises and the right-of-way permits which implement the franchise shall be treated in a competitively neutral and nondiscriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Franchise and right-of-way permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.
- (b) Third Party Requirements.
  - (1) All installations of small cell facilities must have permission from the pole/structure owner to install facilities on such structure.
  - (2) Governing Construction or Electrical Code. All installations of small cell facilities shall comply with any governing construction or electrical code such as the National Electrical Safety Code, the National Electric Code or state electrical code, as applicable. All installations of ground-mounted or replacement structures shall comply with the city’s adopted standards for construction in the right-of-way.
  - (3) Electrical Connection. The city is not responsible for providing electricity to small cell facilities. Any third-party utility providing such electricity must obtain a franchise from the city prior to operating in the rights-of-way.

- (4) Transport/Telecommunications Connection. The city is not responsible for providing transport connectivity (i.e., fiber) to small cell facilities. Any third-party utility providing such transport connectivity must obtain a franchise from the city prior to operating in the rights-of-way.
- (d) Design Review. Small cell deployment in design zones and underground areas, as well as certain new or replacement facilities are subject to the design requirements provided for in the approved franchise and in this section.

**14.62.240 Right-of way permit for small cells and deviations.**

(a) The director shall review applications for a right-of-way permit for a small cell deployment approved by a franchise or described in a concurrent franchise application. Deviations of the plans submitted may be approved by the director if the dimensions or volume of small cell facilities do not exceed the cumulative total provided by the definition of a small cell or microcell facility in RCW 80.36.375 and concealment technologies referenced in the exhibits to the franchise or design standards. A deviation may be approved by the director in the following circumstances:

- (1) An increase in height of up to ten feet above the top of the existing pole.
- (2) An increase in height exceeding ten feet using a replacement pole above the top of the existing pole, if required by the utility company for safety and/or operational purposes. The replacement pole shall be installed by the utility company.
- (3) Replacement components of an existing, approved small cell facility, and the addition of antennas on a pole that exceed a cumulative total of nine cubic feet shall be considered a deviation. Provided, however, that in each instance the replacement components are consistent with the intent of the concealment features set by city's generally applicable pole design standard adopted pursuant to the franchise, or Section 14.62.260.
- (4) The decision of the director to approve or deny a right-of-way permit for a small cell facility with a deviation, if any, shall be final and is not subject to local appeal under city code or further legislative review.

**14.62.250 Amendments to the franchise agreement.**

A new pole or expansion beyond the dimensions or volume of small cell facility which exceeds the cumulative total provided by the definition of a small cell or microcell facility in RCW 80.36.375 shall require an amendment to the franchise agreement.

**14.62.260 Design and concealment standards for small wireless deployments.**

Small wireless facility deployments permitted in the right-of way in accordance with this chapter shall conform to the following design standards:

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

- (1) Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning no more than six (6) inches off of the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

- (2) The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.
  - (3) All conduit, cables, wires and fiber must be routed internally in the light pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.
  - (4) An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.
  - (5) Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.
  - (6) The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary for adequate clearance from electrical wires, whichever is greater, but not to exceed 50-feet.
  - (7) The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25% increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole.
  - (8) The use of the pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.
- (b) Wooden pole design standards. Small wireless facilities located on wooden poles shall conform to the following design criteria:
- (1) The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities, but not to exceed 50-feet.
  - (2) A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A "pole extender" as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole, but not to exceed 50-feet.
  - (3) Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.
  - (4) Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.

- (5) Antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.
- (6) Antennas should be placed to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume, not to exceed a maximum of nine (9) cubic feet.
- (7) A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection (b)(1) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.
- (8) The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.
- (9) An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.
- (10) All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.
- (11) Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (e)(2) below. The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.
- (12) An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed to appear as an integrated part of the pole or behind banners or signs, provided that such location does not interfere with the operation of the banners or signs.
- (13) The visual effect of the small wireless facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.
- (14) The use of the wooden pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the

host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

- (15) The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing utility pole measured at the base of the pole.
- (16) All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small wireless.
- (c) Small wireless facilities attached to existing buildings, shall conform to the following design criteria:
  - (1) Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
  - (2) The interruption of architectural lines or horizontal or vertical reveals is discouraged.
  - (3) New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.
  - (4) Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
  - (5) Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
  - (6) Small wireless facilities shall be painted and textured to match the adjacent building surfaces.
- (d) Small wireless facilities mounted on cables (strand mounted) strung between existing utility poles shall conform to the following standards.
  - (1) Each strand mounted facility shall not exceed three (3) cubic feet in volume;
  - (2) Only one strand mounted facility is permitted per cable between any two existing poles;
  - (3) The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance technically necessary or is required by the pole owner for safety clearance;
  - (4) No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
  - (5) Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and
  - (6) Pole mounted equipment shall comply with the requirements of subsections A and B above.
  - (7) Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).
  - (8) Strand mounted facilities are prohibited on non-wooden poles.
- (e) General requirements.
  - (1) Single-Facility Installation. Each utility pole may not contain more than one small cell facility.
  - (2) Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed under ground or the applicant can demonstrate that pole mounted, or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.
  - (3) Primary Equipment Enclosure Location and Dimensions. The applicant shall minimize the primary equipment enclosure space and use the smallest amount of enclosure possible to fit the necessary equipment. The primary equipment enclosure shall be located using the following methods in priority order:
    - (i) Concealed completely within the pole or pole base. If within the pole base, the base shall meet the ADA requirements and not impact the pedestrian access route.

- (ii) Located on a pole. If located on a pole, the equipment enclosure shall be twenty-eight cubic feet or less in size.
- (iii) Underground in a utility vault. If located underground, the access lid to the primary equipment enclosure shall be located outside the footprint of any pedestrian curb ramp and shall have a nonskid surface meeting ADA requirement if located within an existing pedestrian access route. No vault lids will be allowed in the sidewalk areas within the Downtown Lake Stevens subarea.
- (iv) On private property. If located on private property, the applicant shall submit a copy of an executed easement or lease agreement with the private property owner prior to the right-of-way permit issuance. In addition, if the private property is zoned residential, the applicant shall comply with the permit requirements for WCF in this chapter.
- (4) No equipment shall be operated to produce noise in violation of Chapter 9.56 LSMC.
- (5) Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service.
- (6) Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.
- (7) Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.
- (8) No signage, message or identification other than the manufacturer's identification or identification required by governing law can be portrayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches); provided that, signs are permitted as concealment element techniques where appropriate.
- (9) Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.
- (10) Side arm mounts for antennas or equipment must be the minimum extension necessary and for wooden poles may be no more than twelve (12) inches off the pole and for non-wooden poles no more than six (6) inches off the pole.
- (11) The preferred location of a small wireless facility on a pole is the location with the least visible impact.
- (12) Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached.
- (13) Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use in the residential zones.
- (14) The City may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way in when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.
- (15) These design standards are intended to be used solely for concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or

deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

#### Examples of a well-designed small cell facility



#### Examples of a poorly designed small cell facility



#### 14.62.270 Design Zones for Small Wireless Facilities

(a) The following areas are hereby designated “design zones” for this chapter. Design zones shall include the following districts:

- (1) All zones within Lake Stevens Subarea.
- (2) All zones within the 20<sup>th</sup> Street SE Corridor Subarea.
- (3) All zones within the Downtown Lake Stevens Subarea.

(b) Any applicant who desires to place a small wireless facility in a Design Zone must first establish that the applicant cannot locate the small wireless facility outside of the Design Zone. Applications for small wireless facilities in a Design Zone may be approved if the applicant demonstrates that due to

technical infeasibility the applicant cannot locate the proposed small wireless facility on an existing or replacement pole within 500 feet of the proposed site and outside of the Design Zone.

(c) Small wireless facilities within the Downtown Lake Stevens Subarea shall not be placed on new decorative light standards unless technologically infeasible to locate on structures outside of the right-of-way and provide sufficient coverage.

(d) Applications for small wireless facilities within Design Zones must receive a land use approval and comply with a concealment element design described in section 14.62.260 LSMC above.

**14.62.280 New poles in the rights-of-way for small wireless facilities and installations in a Design Zone.**

(a) New poles within the rights-of-way are only permitted if the applicant can establish that:

- (1) The proposed small wireless facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights of way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;
- (2) The proposed small wireless facility receives approval for a concealment element design, as described in subsection (b) below;
- (3) The proposed small wireless facility also complies with Shoreline Management Act, and SEPA, if applicable; and
- (4) No new poles shall be in a critical area or associated buffer required by the City's Critical Areas Management ordinance (Chapter 14.88 LSMC), except when determined to be exempt pursuant to said ordinance.

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

- (1) The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including similar height to the extent technically feasible. If the proposed small wireless facility is placed on a replacement pole in a Design Zone, then the replacement pole shall be of the same general design as the pole it is replacing, unless the development services department otherwise approves a variation due to aesthetic or safety concerns. Any concealment element design for a small wireless facility on a decorative pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the decorative pole. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color, and texture - or the appearance thereof - as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to section 14.62.260 LSMC.
- (2) If the Director has already approved a concealment element design either for the applicant or another small wireless facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.



(c) Even if an alternative location is established pursuant to section 14.62.270 (b) & (c) LSMC the Director may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.

(d) Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed small wireless facility is more than fifty (50) feet.

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

**14.62.290 Franchise application.**

Applicants shall apply using the city's franchise application form and submit a fee per the city's fee schedule to process an application for a franchise. The director of Planning and Community Development "director" is charged with administration of small cell deployments and other wireless communication review processes established under this title. All franchise applications shall designate the entire city right-of-way as the franchise boundary.

**14.62.300 Implementation—Right-of-way permits for small cell deployment.**

The rights granted under the franchise are implemented through the issuance of right-of-way permits. The franchise application may be accompanied by one or more applications for a right-of-way permit to deploy small cells. An initial franchise and all related right-of-way permit applications shall be processed concurrently as one master permit under Chapter 35.99 RCW.

(a) Up to twenty sites may be specified in one right-of-way permit application for processing. At the discretion of the director, up to five additional sites may be included in order to consider small cell sites within one service area in one application.

(b) Issuance of a right-of-way permit to install a small cell deployment shall be contingent upon approval of a franchise or the possession of a valid franchise.

(c) If more than one application for a right-of-way permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application shall be considered first. All right-of-way permits which are submitted in conjunction with a franchise application shall be considered as one master permit. Any element of a deployment which qualifies as either an eligible facilities request or a co-location shall be specifically designated by the applicant and may be addressed separately by the director in order to comply with the shot clocks established by federal law and this chapter.

(d) The director may approve, deny or conditionally approve all or any portion of the sites proposed in the right-of-way permit application.

(e) Any application for a small cell deployment which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 16.04.

(f) Regulatory Authorization. Issuance of the right-of-way permit for the facilities shall also be contingent upon the applicant's provision of proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

**14.62.310 Ground-mounted equipment—ADA compliance required.**

In areas of the city where overhead utility lines have been undergrounded (undergrounded areas), in designated design zones (see Section 14.62.170), and in other areas where necessary to permit full use of the public right-of-way by pedestrians, bicycles and other users, all ground-mounted equipment shall be undergrounded in a vault meeting the city's construction standards. The location of ground-mounted equipment (to the extent undergrounding such equipment is not technologically feasible), a replacement pole or street light shall comply with the Americans with Disabilities Act (ADA), city development standards, and state and federal regulations to provide a clear and safe passage within the public right-of-way. Ground-mounted equipment is also permitted on private property adjacent to the public right-of-way with a recorded easement or lease agreement and permit in accordance with requirements of this chapter.

**14.62.320 Underground Districts.**

(a) Underground Districts. The city requires the undergrounding of new utilities in all areas of the City except within the rights-of way along the following roads:

- (1) State Route 9;
- (2) State Route 92;
- (3) State Route 204;
- (4) Lundeen Parkway from SR 9 to Callow Road;
- (5) 20th Street NE except between 118th Avenue NE and 127th Avenue NE;
- (6) 20th Street SE.

(b) In areas designated as underground districts and where other utilities are located underground, a service provider or infrastructure company desiring to locate any above-ground infrastructure in support of a small cell deployment shall demonstrate that it is technologically infeasible to incorporate base facilities within proposed or existing light poles or in a vault underground. In such cases the applicant shall submit a concealment element plan in accordance with the provisions of section 14.62.270 LSMC.

(c) In areas designated as underground districts where existing utilities are currently located above ground, small wireless facilities may be located above ground with the submission of a concealment element plan in accordance with the provisions of section 14.62.270 LSMC. Such facilities may remain until such time that other utility lines and poles are placed underground.

(d) It is the stated policy of the city that all utilities shall be underground in areas that are currently undergrounded. No new utility poles shall be erected in undergrounded areas. The applicant may request to install a new street light with integrated small wireless facility.

**14.62.330 Replacement Utility Pole — Street Lighting.**

With the express permission of the City, a replacement utility pole or a new utility pole may be permitted in the form of a new street light standard. The design of the street light standard shall be in accordance with adopted City construction standards when located outside of a Design Zone or underground district. Replacement utility poles/street light standards located within a Design Zone shall conform to the adopted streetscape design standard for the Design Zone. Wherever technologically feasible, all equipment and cabling shall be internal to the replacement street lighting standard.