

1. Agenda

Documents:

[PC AGENDA 12-10-2018.PDF](#)

2. Meeting Materials

Documents:

[MINUTES OF NOVEMBER 13, 2018.PDF](#)
[WIRELESS COMMUNICATION FACILITY AND SMALL CELL CODE
AMENDMENT DISCUSSION.PDF](#)



PLANNING COMMISSION AGENDA

Monday December 10, 2018 – 6:30PM

Stanwood Fire Station (8117 267th Pl NW)

1. Call to Order
2. Roll Call
3. Public Requests and Comments
4. Minutes of November 12, 2018
5. New Business
 - Wireless Communication Facility & Small Cell Code Amendment Discussion
6. Old Business
7. Miscellaneous Business
8. Public Comments
9. Recent Council Action on Commission Items
10. Upcoming Items
11. Adjourn

SPECIAL ACCOMMODATIONS: The City of Stanwood strives to provide accessible meetings for people with disabilities. Please contact the Planning Commission Clerk at 360-629-2181 ext. 5211 two business days prior to the meeting.



STANWOOD PLANNING COMMISSION MINUTES

November 13, 2018

Call to Order

Chair Utgard called the meeting to order at 6:32PM with the following Commissioners present: Randy Heagle, Steve Shepro, Lance Dennis, Sid Roberts and Darren Robb. Commissioner Metz was absent. Staff present; City Administrator Jennifer Olson, Community Development Director Patricia Love, Public Works Director Kevin Hushagen and Senior Planner Amy Rusko. Known public in attendance: Cathy Wooten, Kathleen Shepro, Peggy Wendell.

No Public Requests or Comments

Minutes

The minutes of the October 8, 2018 meeting were approved as presented.

New Business

Public Hearing Public Works 6-year Capital Improvement Project (CIP) Update 2019-2024

Chair Utgard opened the public hearing at 6:34 pm

Public Works Director Kevin Hushagen gave a presentation, reviewing the Public Works 6-year CIP Updates for 2019-2024.

The Planning Commission discussed; 80th Avenue improvements, high priorities for funding sources, council and mayor priorities, late comers agreements for improvements, round-a-bouts at various locations, Jones family property, masterplan work, Heritage Park expansion, Josephine property, water storage concerns, elevated water storage tank, sewer capacity, bio-solids processing facility, Irvine Slough stormwater, and cost of drainage throughout the City.

No Public Comments for the Public Hearing

Chair Utgard closed the public hearing at 7:21 pm.

Motion. Motion by Commissioner Heagle, second by Commissioner Roberts to recommend City Council approve the proposed 2019-2024 Capital Improvement Plan (CIP) and update the Capital Facilities Element (Table CF-20) of the Comprehensive Plan to reflect the new CIP and any final adjustments made by Council. Motion carried unanimously.

2018 Public Works Project Update

Senior Planner, Amy Rusko gave a PowerPoint presentation showing the current and completed Public Works projects for 2018.

Projects discussed included: 92nd Avenue Overlay, Cedarhome Drive Overlay, Sludge Pond Improvements, Heritage Park Baseball Fields Design, 90th Avenue & Viking Way, Irvine Slough Stormwater Separation, SCADA / Telemetry Upgrades.

SR 532 / 72nd Avenue Pedestrian Safety Project

Community Development Director, Patricia Love gave a PowerPoint presentation that showed the SR 532 interchange over time. The presentation included past, current and projected traffic data at the interchange.

The presentation showed the findings regarding the need for a safety or pedestrian improvement project at the intersection of SR532 and 72nd Avenue. Currently the City does not include any projected improvements at this location in their 6 or 20 year CIP. The intersection is and will operate below the adopted level of service in the next 20 year planning period and safety criteria established by WSDOT for considering improvements has not been met.

Discussions included: origin and destination of vehicular trips, level of services, accident data, hazardous intersections, traffic calming devices, perception vs actual safety, busy intersection, distracted by children, discuss issues with the high school, pedestrian overpass, signal delays, pedestrian beacons, audible crossing, comprehensive plan update period and SR532 projects.

If the City is interested in improving pedestrian comfort at the SR532 crossing, then that project would need to be prioritized against other established projects already listed in the CIP. The City will be meeting with Washington State Department of Transportation on December 7, 2018 to discuss SR532 all the way through town.

Miscellaneous Business

- Mod Pizza building, blank back wall, location of the building on the site, setback from the street.

No Additional Public Comments

Recent Council Action on Commission Items

- LI/GI Code Adoption at the November 8, 2018 Council Meeting.

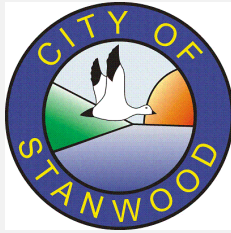
Upcoming Items

- Small Cell Code Planning Commission Public Hearing and City Council Adoption prior to January 14, 2019.

Adjourn

The meeting adjourned at 8:12 PM.

Amy Rusko, City of Stanwood



MEMORANDUM

COMMUNITY DEVELOPMENT DEPARTMENT

**10220 270th St NW
Stanwood, WA 98292
360-629-4577**

TO: PLANNING COMMISSION
FROM: Patricia Love, Community Development Director
SUBJECT: Wireless Communication Facility & Small Cell Code Amendment
DATE: December 10, 2018

The Federal Communications Commission (FCC) recently released new rules for wireless communication facilities and small cell deployment. The intent of the regulations is to streamline the permitting processes across the country. Cities and Counties are required to update their development and franchise regulations by January 14, 2019. To meet this timeline a public hearing will be held on January 7 by the Planning Commission at a special meeting, followed by a public hearing with the City Council on January 10, 2019

Currently the City has a “cell tower” code, but it is out of date as it relates to the “small cell” technology and federal regulations. Typically, small cells are attached to utility poles or light/traffic poles within the rights-of-way. The purpose of the small cells is to augment capacity for data traffic in dense areas and are typically 25-45 feet in height, rather than tall macro towers that extend beyond 75 feet.

The attached draft code amendment combines the city’s existing wireless communication facility regulations with new small cell deployment regulations and franchise requirements into three new chapters of the Stanwood Municipal Code:

- Chapter 17.200, Eligible Facility Modification and Wireless Communication Devices
- Chapter 17.205, Eligible Facility Modifications
- Chapter 17.210, Regulation of Wireless Communication Facility Franchise

In conjunction with merging existing city wireless communication facilities codes with the new small wireless facilities requirements, the following Stanwood Municipal Code chapters will be repealed:

- Chapter 17.154, Wireless Communication Facilities
- Chapter 17.156, Eligible Facility Modifications

Small Wireless Facility Amendments

- **Caps all fees** related to small wireless facilities (SWF) at “a reasonable approximation of the state or local governments’ actual and reasonable costs.”
 - Caps apply to application/review or similar fees for SWF inside and outside the rights of way; right of way use fees; and fees for use of municipal property in the rights of way.
 - The following fees are presumed to meet the standard:
 - **Non-Recurring Fees:** \$500, including a single up-front application that includes up to five SWF, with an additional \$100 for each SWF beyond five, or \$1,000 for non-recurring fees for a new pole to support SWF.
 - **Recurring Fees:** \$270 per SWF per year for all recurring fees, including any ROW access fee or fee for attachment to municipally-owned structures in the ROW.
 - Local governments can charge higher fees than those set forth above if they can show the fees are:
 - A reasonable approximation of costs;
 - Those costs themselves are reasonable; and
 - They are non-discriminatory.
- **Preempts aesthetics requirements** for SWF unless they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance.
 - Under this standard, requirements that all wireless facilities be deployed underground are preempted, as is any undergrounding requirement that “materially inhibits wireless service.”
 - Implies that minimum spacing requirements likely could not meet this standard.
- **Imposes shot clocks** of 60 days for SWF added to existing structures (regardless of whether the structure already supports a SWF) and 90 days for SWF using a new structure.
 - Existing shot clocks for non-SWF deployments remain in place: 90 days for collocation on an existing structure; 150 days for deployment on a new structure.
 - Both the new and existing shot clocks apply to “any approval that a siting authority must issue under applicable law prior to deployment.” This includes zoning approvals and building permits, and may also include license or franchise agreements to access the rights of way, leases for use of municipal poles or property in the rights of way, electric permits and road closure permits, among others.
 - For SWF, shot clocks are reset, not just tolled, if the siting authority notifies the applicant within 10 days after submission that the application is incomplete. For subsequent determinations of incompleteness, the shot clock would toll—not reset—if the siting authority provides written notice within 10 days that the supplemental submission did not provide the requested information.
 - For non-SWF, shot clocks begin to run when an application is first submitted, and can be paused—not reset—if the siting authority notifies the applicant within 30 days that the

application is incomplete. For subsequent determinations of incompleteness, the process is the same as described above for SWF.

- Failure to act within the new small wireless facility shot clock constitutes a presumptive violation of the Communications Act and applicants may seek expedited injunctive relief in court within 30 days of a local government missing a shot clock deadline. There is no “deemed granted” remedy.
- **Defines SWF** as, among other things:
 - Facilities
 - mounted on structures 50 feet or less in height including their antennas; or
 - mounted on structures no more than 10 percent taller than other adjacent structures; or
 - that 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.
 - Each antenna associated with the deployment, excluding associated antenna equipment, is no more than 3 cubic feet in volume;
 - 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.
- **Does not grandfather** existing agreements or state small cell bills or other state laws, which may be preempted to the extent they conflict with the Ruling and Order.

Other Definitions:

The following definitions will need to be updated or added to meet federal and state law:

Collocation	Service Provider	Tower Underground Areas
Concealment	Small Cell Network	Utility Pole
Eligible Facilities Modification	Telecommunication Service	
Microcells	Transmission equipment	

Permit Review Process:

Evaluate type of permitting processes are appropriate: Administrative or Conditional Use Permit

- Minor Facilities – Currently a Permitted Use
- Co-Located Facilities – Currently a Permitted Use
- Single Facilities – Currently a Permitted Use
- Towers – Currently a Condition Use Permit
- Small Cell – Need to include in code

Review Timelines (already adopted with WCF code):

Federal law has the following specific timelines for permit review:

Permit / Approval	Mandated Review Period
Eligible Facilities Request – A letter to the city requesting that a permit be reviewed as a facility modification – not as a new facility	60 Days

Eligible Co-locations on Existing Facilities	90 Days
New Wireless Communications	150 Days
Determination of Permit Completeness	30 Days
Determination of Permit Completeness – 2nd submittal and beyond	10 Days plus no new items can be added that were not listed in the first review

Failure to Act:

If the City doesn't meet the timeframes listed above, then the application is "deemed granted".

Appeals / Claims:

Both the City and the Applicant can bring claims in court according to federal law.

Major and Minor Modifications:

A significant area of concern to the cell company providers is what is considered a major or minor modification to an existing facility. Major modifications are equivalent to new permits while minor modifications can usually be permitted administratively more quickly. Federal law is mandating what constitutes a major or minor modification.

Performance Standards:

City code already addresses the following development / performance standards for siting telecommunication facilities. These standards generally address cell towers, attached facilities and the associated land cabinet equipment. The following sections will be evaluated to determine if any additional changes are needed or how the small cell technology may or may not work within these standards.

Separation Distance
Setbacks
Height
Landscaping
Lighting

Concealment Technology
Noise
Colocation
Abandonment

Maintenance
Electronic Emissions
Exception Use of City right of Way

Chapter 17.200

Eligible Facility Modifications and Wireless Communication Devices

Sections:

17.200.005 Purpose

17.200.010 Definitions

17.200.005 Purpose

The purpose of chapters 17.200, 17.205, 17.210, and 17.220 is to provide specific regulations for the placement, construction, modification and removal of WSF. Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 332(c)(7) and other applicable city, state and federal rules, regulations, and guidelines, the provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of wireless services, nor shall the provisions of this chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent wireless services.

1. The goals of these chapters is to:

- a. Encourage the location of towers in nonresidential areas and to minimize the total number of tall towers throughout the City;
- b. Encourage the joint use of existing tower sites;
- c. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the impact on the City is minimal;
- d. Encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas;
- e. Strongly encourage the providers of wireless services to use concealment technology;

- f. Provide standards for the siting of WSF and other wireless communications facilities (such as television and AM/FM radio towers);
 - g. Facilitate the ability of the providers of wireless services to provide such services throughout the City quickly, effectively and efficiently; and
 - h. Prioritize the location of WSF on existing structures such as ballfield lights, transmission towers, utility poles or similar structures, particularly when located on public property.
2. Accordingly, the City Council finds that the promulgation of these chapters is warranted and necessary to:
- a. Manage the location of towers and antennas in the City;
 - b. Protect residential areas and other land uses from potential adverse impacts of towers and antennas;
 - c. Minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;
 - d. Accommodate the growing need for towers and antennas;
 - e. Promote and encourage shared use and co-location on existing towers as a desirable option rather than construction of additional single-use towers; and
 - f. Avoid potential damage to adjacent properties through engineering and proper siting of WSF.

17.200.010 Definitions

The following definitions shall apply in the interpretation and enforcement of this chapters 17.205, 17.210, 17.220 unless the context clearly requires otherwise. Any term or phrase not defined herein shall have the meaning that is given to that term or phrase in Chapter 17.20 SMC. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory and the word "may" is always discretionary. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific

provisions of law, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.

(1) "Approval authority" is the public official, or designee, who has authority under the Stanwood Municipal Code to administratively issue project permit approvals.

Commented [BV1]: Keep this or make it planning director

(2) "Applicant" shall mean and refer to the person, and such person's successor in interest, owning and/or operating the transmission equipment proposed in an eligible facilities modification application to be collocated, removed or replaced.

(3) "Authorized person" is the person, employees, agents, consultants, and contractors, authorized in writing by applicant to complete and submit an eligible facilities modification application on behalf of applicant and who is authorized to receive any notices on behalf of applicant of any action taken by the city regarding the application.

(4) "Base station" shall mean and refer to the structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.

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

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

(c) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the city under this chapter, supports or houses equipment described in subsections (4)(a) and (b) of this section, and that has been reviewed and approved under the applicable zoning or siting process, or under another state, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(d) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the city under this section, does not support or house equipment described in subsections (4)(a) and (b) of this section.

(5) "City" shall mean and refer to the city of Stanwood.

(6) "City code" shall mean and refer to the codified ordinances of the city.

(7) "Collocation" shall mean and refer when more than one wireless communications provider mounts equipment on a single support structure (e.g., structure, monopole, lattice tower). The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes. (8) "Conceal" or "concealment elements" are transmission facilities designed to look like some feature other than a wireless tower or base station or which minimizes the visual impact of an antenna by use of nonreflective materials, appropriate colors and/or a concealment canister..

(9) "Deemed approved" shall mean and refer to an eligible facilities modification application that has been deemed approved upon the city's failure to act, and has become effective, as provided pursuant to the FCC eligible facilities request rules.

(10) "Eligible facilities modification application" or "application" shall, unless the context clearly requires otherwise, mean and refer to a written document submitted to the city pursuant to this chapter for review and approval of a proposed facilities modification.

(11) "Eligible facilities modification" shall mean and refer to any proposed facilities modification that has been determined pursuant to the provisions of this chapter to be subject to this chapter and which does not result in a substantial change in the physical dimensions of an eligible support structure, tower or base structure involving:

- (a). Collocation of new transmission equipment;
- (b) Removal of transmission equipment; or
- (c). Replacement of transmission equipment..

(12) "Eligible facilities modification permit" or "permit" shall, unless the context clearly requires otherwise, mean and refer to a written document issued by the approval authority pursuant to this chapter approving an eligible facilities modification application.

(13) "Eligible support structure" shall mean and refer to any existing tower or base station as defined in this chapter; provided, that it is in existence at the time the eligible facilities modification application is filed with the city under this chapter.

(14) "Existing" shall, for purpose of this chapter and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the city, or under another state, county or local regulatory review process; provided, that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(14.5) "Microcells" means a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length in accord with RCW 80.36.375.

(14.6) "Minor facility" means a wireless communication facility consisting of up to three antennas, each of which is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length; and the associated equipment cabinet that is six feet or less in height and no more than forty-eight square feet in floor area.

(15) "Proposed facilities modification" shall mean and refer to a proposal submitted by an applicant to modify an eligible support structure which the applicant asserts is subject to review under Section 6409 of the Spectrum Act, and involving:

- (a) Collocation of new transmission equipment;
- (b) Removal of transmission equipment; or
- (c) Replacement of transmission equipment.

(16) "FCC" shall mean and refer to the Federal Communications Commission or its successor.

(17) "FCC eligible facilities request rules" shall mean and refer to 47 CFR Part 1 (Part 1 – Practice and Procedure), Subpart CC, Section 1.40001, as established pursuant to its report and order in In re 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, or as may be thereafter amended.

(17.5) "Service provider" is defined in accord with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.

(18) "Site" shall, for towers other than towers in the public rights-of-way, mean and refer to 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, shall mean and be further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(19) "Small cell facility" shall mean and refer to a personal wireless services facility that meets

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), or

(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 in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume.

(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.

(20) "Small cell network" shall mean and refer to a collection of interrelated small cell facilities designed to deliver personal wireless services as further defined in RCW 80.36.375.

(21) "Spectrum Act" shall mean and refer to the "Middle Class Tax Relief and Job Creation Act of 2012" (Public Law 112-96; codified at 47 U.S.C. 1455(a)).

(22) "Substantial change criteria" shall mean and refer to the criteria set forth in SMC 17.205.090.

(22.5) "Telecommunications service" is defined in accord with RCW 35.99.010(7).

(23) "Transmission equipment" is 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 associates 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..

(24) "Tower" is 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 fixes wireless services such as microwave backhaul and the associated site..

(25) "Undergrounded areas": Public Rights-of-Way in which wireline utilities have been located or relocated underground.

(26) "Utility pole" is 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.

Chapter 17.205 ELIGIBLE FACILITY MODIFICATIONS

Sections:

- 17.205.010 Title.
- 17.205.020 Adoption of findings and conclusions.
- 17.205.030 Purpose and intent.
- 17.205.040 Definitions.
- 17.205.050 Applicability – Relationship to other rules and regulations.
- 17.205.060 Permit classification.
- 17.205.070 Application submittal requirements – Determination of completeness.
- 17.205.080 Review of application – Approval.
- 17.205.090 Substantial change criteria.
- 17.205.100 Nonconforming structure – Termination.
- 17.205.110 Enforcement – Violation.

17.205.010 Title.

This chapter shall be known and referred to as the "Eligible Facilities Modification Code" or "EFM Code." Unless the context indicates otherwise, a reference herein to "this code" or "this chapter" shall mean and refer to the eligible facilities modification code.

17.205.020 Adoption of findings and conclusions.

The recitals set forth in the ordinance adopting this code are adopted as findings and conclusions of the city council.

17.205.030 Purpose and intent.

The purpose and intent of this chapter are:

(1) To implement Section 6409 of the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. 1455(a)) which requires the city to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station;

(2) To implement the FCC rules set forth at 47 CFR Part 1 (Part 1 – Practice and Procedure) new Subpart CC Section 1.40001 (Wireless Facility Modifications), which rules implement Section 6409 of the Spectrum Act;

(3) To establish procedural requirements and substantive criteria applicable to review and approval or denial of applications for an eligible facilities modification;

(4) To ensure that application submittal requirements are related to information reasonably necessary to the determination of whether or not the proposed modification will result in a substantial change in the physical dimensions of the eligible support structure;

(5) To exempt facilities modifications approved under this chapter as eligible facilities requests from zoning and development regulations that are inconsistent with or preempted by Section 6409 of the Spectrum Act;

(6) To preserve the city's right to continue to enforce and condition approvals under this chapter on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety;

(7) To promote timely decisions under this chapter;

(8) To ensure that decisions are made consistently and predictably;

(9) To incorporate provisions of RCW 43.21C.0384 that exempt eligible facilities modifications from review under RCW 43.21C.030(2)(c) (State Environmental Policy Act);

(10) To recognize that Section 6409(a)(1) of the Spectrum Act operates to preempt any provision of the State Environmental Policy Act (Chapter 43.21C RCW) to the extent that any such provision, including RCW 43.21C.030(2)(c), would prohibit a city from approving

any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station; and

(11) To provide for termination of eligible facilities modifications approved pursuant to this chapter as nonconforming structures in the event that Section 6409(a) of the Spectrum Act is found to be unconstitutional or otherwise determined to be invalid or unenforceable and such modifications would otherwise have been in derogation of development regulations in place at the time of receipt of a completed application.

17.205.040 Definitions.

The definitions for this chapter are as set forth in section 17.200.010 SMC.

17.205.050 Applicability – Relationship to other rules and regulations.

(1) 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 of the Spectrum Act or other applicable law. 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. In the event that 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. In the event that 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 of the Spectrum Act or other applicable law, 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.

(2) This chapter 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.

(3) This chapter shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of the tower or base station.

(4) 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.

(5) Interpretations of this chapter shall be guided by Section 6409 of the Spectrum Act; the FCC eligible facilities request rules, the FCC's report and order in *In re 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; and SMC 17.156.020 (Adoption of findings and conclusions) and 17.156.030 (Purpose and intent) and other applicable local, state, or federal law.

(6) 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:

(a) 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

(b) 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;¹ or

(c) The authority to condition or deny an application pursuant to Chapter 43.21 RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.

(7) 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.

17.205.060 Permit classification.

An eligible facilities modification permit shall be classified as an administrative permit subject to review and approval or denial by the approval authority and classified as a Type I permit process.

Commented [BV2]: Confirm that this is still desired

Commented [BV3R2]: Patricia to look at permitting matrix to see if we want different process for different permits

17.205.070 Application submittal requirements – Determination of completeness.

(1) This section sets forth the submittal requirements for an eligible facilities modification application. 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 proposed 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 modifications or to justify the business decision to propose such modifications.

(2) No eligible facilities modification application shall be deemed complete unless it is, in writing, accompanied by the applicable application and review fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant, 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:

(a) The following contact information for the authorized person:

- (i) Name;
- (ii) Title;
- (iii) Mailing address;
- (iv) Phone number; and
- (v) Electronic mail address (optional).

(b) The legal and dba names, mailing address, Washington tax number, and contact phone number(s) of applicant.

(c) If a corporation, the name and address of the registered agent of applicant in Washington State, and the state of incorporation of applicant.

(d) If applicant is an entity, other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.

(e) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act or other applicable law.

(f) 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 shall be required. 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.

(g) If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure shall be required.

(h) 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 (i) as originally constructed and granted approval by the city or other applicable local zoning or similar regulatory authority, or (ii) as of the most recent modification that received city or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater, shall be required.

(i) 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, the following shall be required: a copy of the document (e.g., CUP or SUP) 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.

(j) 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, the following shall be required:

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.

(k) If the applicant proposes a modification that will protrude from the edge of a nontower eligible support structure, the following shall be required:

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.

(l) If the applicant proposes a modification to an eligible support structure that will (i) include any excavation, (ii) 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 (iii) would protrude from the edge of a nontower eligible support structure, the following shall be required:

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.

(m) If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the following shall be required:

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.

(n) If the applicant proposes a modification to a tower, the following shall be required:

A stamped report by a state of Washington 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 (NIEER) standards. 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.

(o) If the applicant proposes a modification to a base station, the following shall be required:

A stamped report by a state of Washington registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes.

(p) 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, the following shall be required:

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

(q) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 CFR Part 1 (Part 1 – Practice and Procedure), Section 1.1307, as amended, or, in the event that an FCC

environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.

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

(4) An eligible facilities modification 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 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.

(5) Completed Application – Determination – Tolling.

(a) The approval authority shall, within 30 days of receipt of the application, review the application for completeness. An application is complete if it includes the applicable permit review fee(s) and contains all of the applicable submittal requirements set forth at subsection (2) of this section, unless waived by the approval authority pursuant to subsection (3) of this section. The determination of completeness shall not preclude the approval authority from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, or substantial changes in the proposed action occur, or the proposed facilities modification is modified by applicant, as determined by the approval authority.

(b) 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) The application review period begins to run when the application is received, and may be tolled when the approval authority determines that the application is incomplete and provides notice as set forth below. The application review period may also be tolled by mutual agreement of the approval authority and applicant. The

time frame for review is not tolled by a moratorium on the review of eligible facility modification applications.

(i) To toll the time frame for review for incompleteness, the approval authority must provide written notice to the applicant within 30 days of the date of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to submittals set forth in subsection (2) of this section and any supplemental information requested by the approval authority that is reasonably related to determining whether the proposed facilities modification will substantially change the physical dimension of an eligible support structure.

(ii) The time frame for review begins running again when the city is in receipt of applicant's supplemental submission in response to the approval authority's notice of incompleteness.

(iii) Following a supplemental submission, the approval authority shall have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection (5)(c)(iii). Except as may be otherwise agreed to by the applicant and the approval authority, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(iv) A notice of incompleteness from the city will be deemed received by the applicant upon the earlier of personal service upon the authorized person, delivery by electronic mail to the authorized person (if such delivery is authorized for receipt of notice by the authorized person), or three days from deposit of the notice in the United States mail, postage prepaid, and in an envelope properly addressed to the authorized person using the address set forth in the application.

(d) In the event that after submittal of the application, or as a result of any subsequent submittals, applicant modifies the proposed facilities modification

described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided, that applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the city to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

17.205.080 Review of application – Approval.

(1) Review of Application. The approval authority shall review an eligible facilities modification application to determine if the proposed facilities modification is subject to this chapter, and if so, if the proposed facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.

(2) Time Frame for Review. Within 60 days of the date on which the city receives an eligible facilities modification application, less any time period that may be excluded under the tolling provisions of this chapter or a tolling agreement between the applicant and the approval authority, the approval authority shall approve the application and contemporaneously issue an eligible facilities modification permit unless the approval authority determines that the application is not subject to this chapter, or the proposed facilities modification will substantially change the physical dimension of an eligible support structure.

(3) An eligible facilities application shall be approved, and an eligible facilities permit issued, upon determination by the approval authority that the proposed facilities modification is subject to this chapter and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities application shall be denied upon determination by the approval authority that the proposed facilities modification is not subject to this chapter or will substantially change the physical dimensions of an eligible support structure. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the substantial change criteria.

(4) An application that has been deemed approved shall be and constitute the equivalent of an eligible facilities modification permit, except as may be otherwise determined by a court of competent jurisdiction, when the city fails to grant or deny the application within

60 days of the date of filing together with any periods during which the shot clock was tolled, and the applicant has notified the city that the application is deemed granted after the expiration of such period. Applications deemed granted shall be subject to generally applicable enforcement and compliance requirements in the same manner as an eligible facilities modification permit issued pursuant to this chapter.

(5) A denial of an eligible facilities modification application shall set forth in writing the reasons for the denial, and shall be provided to the applicant.

(6) Any eligible facilities modification permit issued pursuant to this chapter, and any application that has been deemed approved due to the city's failure to act, shall be and is conditioned upon compliance with any generally applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and safety. Violation of any such applicable code or standard shall be deemed to be a violation of the eligible facilities modification or deemed approved application.

(7) An eligible facilities modification permit issued pursuant to this chapter, and any deemed approved application, shall be valid for a term of 180 days from the date of issuance, or the date the application is approved or deemed approved.

(8) Notwithstanding any other provisions in the city code, no administrative review is provided for review of a decision to condition, deny or approve an application. Applicant and the city retain any and all remedies that are available at law or in equity, including by way of example and not limitation, those remedies set forth in the FCC eligible facilities request rules and remedies available under the Land Use Petition Act. In the event no other time period is provided at law for bringing an action for a remedy, any action challenging a denial of an application or notice of a deemed approved remedy shall be brought within 30 days following the date of denial or following the date of notification of the deemed approved remedy.

9. Determination That Application Is Not An Eligible Facilities Request.

If the Planning Director determines that the applicant's request does not qualify as an Eligible Facilities Request, the Planning Director shall deny the application. To the extent additional information is necessary, the Planning Director may request such information

from the applicant to evaluate the application under other provisions of this Chapter and applicable law.

17.205.090 Substantial change criteria.

“Substantial Change” is a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria::

- a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty 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;
- c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- d. It entails any excavation or deployment outside the current site;
- e. It would defeat the concealment elements of the eligible support structure; or
- f. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification

that is non-compliant only in a manner that would not exceed the thresholds identified above..

17.205.100 Nonconforming structure – Termination.

(1) Application. The provisions of this section shall apply to any facilities modification constructed, installed, placed or erected pursuant to an eligible facilities modification permit, or pursuant to a deemed approved remedy, which facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed eligible facilities modification application was filed.

(2) A facilities modification to which this section applies is subject to termination as a nonconforming structure upon the following conditions:

(a) An appellate court, in a final and nonappealable decision, determines that Section 6409(a)(1) of the Spectrum Act, or other applicable law, is unconstitutional or otherwise determined to be invalid or unenforceable; and

(b) The city provides written notice to the applicant that the city has determined that the facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed eligible facilities modification application was filed and that the facilities modification constitutes a nonconforming structure pursuant to the provisions hereof and must be made conforming or the facilities modification terminated.

(c) Upon receipt of notice of the city's nonconforming structure determination, applicant shall abate the nonconformance by either conforming the site to the zoning and development regulations in effect at the time the completed eligible facilities modification application was filed, or removing the facilities modification and returning the site to the condition that existed prior to the construction, installation, placement or erection of the facilities modification. The time period for conformance shall be one year from the date of the city's notice of the nonconforming structure determination.

(d) Health and Safety Codes. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

(e) The applicant, or its successors or assigns, may appeal the city's determination of nonconformance to the city hearing examiner by filing a notice of appeal within 10 calendar days of the date of the determination of nonconformance, excluding holidays.

17.205.110 Enforcement – Violation.

Compliance with the provisions of this chapter is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions of the SMC.

Chapter 17.210

REGULATION OF WIRELESS COMMUNICATION FACILITY FRANCHISE

Sections:

- 17.210.010 Overview.
- 17.210.020 Definition.
- 17.210.030 Franchise Application.
- 17.210.040 Designation of Facilities.
- 17.210.050 Implementation: Small Cell Permits
- 17.210.060 Review process.
- 17.210.70 Right-of way permit for small cells and deviations
- 17.210.070 Facilities designated in the franchise and/or small cell permit application.
- 17.210.080 Small cell permit and minor deviations.
- 17.210.090 Significant deviations.
- 17.210.100 Franchise and small cell deployment facility approvals and processes.

- 17.210.110 Small Cell
- 17.210.120 Small Cell Facilities in Underground areas or design zones
- 17.210.130 Compliance with State Processing Limitations.
- 17.210.140 Determination that an Application is not an Eligible Facilities Request.

17.210.010 Overview and Purpose.

In order to manage its right-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City while complying with the requirements of State and federal law, the City of Stanwood has adopted this process for the deployment of small cell and microcell technology. Service providers who seek to utilize the public right-of-way for small cell deployment in order 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 Small Cell 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 ordinance and through implementing Small Cell Permits to deploy their technology and obtain design approval of specific installations. The Small Cell Permit process administers deployment under the franchise. An entity without a franchise shall apply for a franchise and adjunct Small Cell Permit which shall be processed concurrently as one Master Permit within the meaning of RCW 35.99.010(3) and 35.99.030.

1. Nothing in this ordinance revises or diminishes the rights and obligations of an existing franchise.
2. 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 or as otherwise defined by law. Small cell deployment elements which require SEPA review may utilize these processes only in conjunction with SEPA review.

17.210.020 Definitions.

Definitions related to this chapter are as set forth in chapter 17.200 SMC.

17.210.030 Franchise Application.

Applicants shall apply using the City's franchise application form and submit a fee according to the City's fee schedule deposit commensurate with the estimated administrative costs of processing an application for a franchise. The fee deposit level shall be set by the Director of Public Works ("Director"). The Director is charged with administration of small cell deployments and other wireless communication review processes established in Stanwood Municipal Code. Subsequent to the approval of a franchise, 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.

Commented [BV4]: Or city adopted fee schedule

17.210.040 Designation of Facilities.

A. The application shall provide:

- i. Specific locational information including GIS coordinates of all facilities,
- ii. Specify whether and where small cell facilities are to be located on existing utility poles including City-owned light standards (included in the definition of utility pole), or
- iii. Whether and where small cell facilities are to utilize replacement utility poles, new poles, towers, and/or other structures.

B. Conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from an infrastructure provider.

C. Detailed schematics and visual renderings of the facilities shall be provided by the applicant.

D. Failure to provide sufficient detail may result in a later finding of a significant change in the facility if significant elements of the facility were not shown on the originally approved franchise exhibit. Failure to include significant elements may also result in the requirement that new or undocumented elements complete the approval processes detailed in this Chapter and in other applicable provisions of Stanwood Municipal Code.

17.210.050 Implementation: Small Cell Permits.

The rights granted under the franchise are implemented through the issuance of Small Cell Permits. The franchise application may be accompanied by one or more applications for a Small Cell Permit to deploy small cells. An initial franchise and all related Small Cell Permit applications shall be processed concurrently as one Master Permit.

a. Up to thirty (30) sites may be specified in one Small Cell Permit application for processing. The Director may approve up to five (5) additional sites in order to consider small cell sites within one logical service area in one application

b. Issuance of a Small Cell 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 Small Cell 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 should be considered first. All Small Cell 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 collocation 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 other applicable regulations.

d. The Director may approve, deny or conditionally approve all or any portion of the sites proposed in the Small Cell Permit application.

e. Any application for a franchise or Small Cell Permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and other applicable regulations.

f. Radio Frequency (RF) Certification. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small cell 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 small cell facility and associated wireless backhaul will operate. An existing franchisee applying for a Small Cell 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. If facilities necessary to the Small Cell Deployment are to be provided by another franchisee, then the Small Cell Deployment in the initial franchise or in a subsequent Small Cell Permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. If facilities necessary to the Small Cell Deployment are to be provided by another franchisee or in a subsequent , the Use Permit to deploy such facilities shall be contingent on submittal of an RF Certification by the other franchisee for such facilities, if such facilities will emit RF emissions, this RF Certification shall address the cumulative impact of the RF emissions and certify compliance with federal requirements.

Commented [BV5]: Confirm against FCC

g. Regulatory Authorization. Issuance of the Use 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.

h. Completeness; Franchise and Small Cell Applications. The Director or his/her designee shall review an application for completeness and notify the applicant within thirty (30) days of submission whether the application is complete, provided, however, that an applicant may consent to a different completeness review period. A service provider may resubmit an incomplete application within sixty (60) days of notice by the Director. Failure to resubmit an application in a timely manner shall be deemed a withdrawal of that application. An applicant shall be notified in writing of the approval or denial of the application. No application shall be deemed complete without the fee deposit set by the Director.

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17.210.060 Review Process.

The following provisions relate to applications for a franchise or Small Cell 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 253 and 47 USC 332 and applicable case law. Applicants for franchises and the Small Cell Permits which implement the franchise shall be treated in a competitively neutral and non-discriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Franchise and Small Cell Permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

B. Concealment for Small Cell.

In any zone not designated by for design review, upon application for a Small Cell Permit or for facilities designated within a franchise, the City will permit small cell deployment on existing utility poles conforming to the City's generally applicable pole design standard adopted pursuant to city code or street and utility standards. Accordingly, small cell facilities installed pursuant to this concealment authorization may not be expanded pursuant to an Eligible Facilities Request unless the Director determines that such

expansion does not defeat the concealment elements of the facilities as outlined in this chapter. The applicable design standards are as follows:

1. Design Standards.

- a. No Colocation. Each wooden utility pole may not contain more than one small cell facility.
- b. Height Restrictions. All small cell facilities shall be in compliance with height restrictions applicable to poles and other structures as stated in Section 17.220.020. The director may approve deviations as described in this chapter.
- c. New and Replacement Poles. The new or replacement poles shall match height, color and material of the original or adjacent poles and shall be subject to approval by the director. The director may approve deviations as described in this chapter.
- d. Interior Concealment. Whenever technologically feasible, antennas and equipment shall be fully concealed within the utility or light pole. When interior concealment is not possible, such as when attached to a wooden utility pole or due to American with Disabilities Act (ADA) requirements, antennas and equipment shall be camouflaged to appear to be an integrated part of the utility or light pole.
- e. Flush-Mounted Standoff Brackets or Pole-Top Antennas. In situations when interior concealment pursuant to subsection (B)(1)(d) of this section is not possible, installation of an antenna on a pole shall be flush mounted, if feasible or located at the top of the pole. Flush mounting includes using brackets that offset the inside edge of such equipment from the utility pole by twelve inches or less, except as otherwise required by the pole owner or a controlling electrical code such as the National Electrical Safety Code, National Electric Code or State Electrical Code and when approved by the city. Standoff brackets are permitted so long as the antennas are mounted as close to the pole as technically feasible, but no more than twelve inches off the pole.

f. **Antenna Design.** Antennas shall be located in an enclosure of no more than three cubic feet in volume, or in case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet. No more than four antennas are permitted on a single utility pole and with a total volume not to exceed nine cubic feet.

g. **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 one of the following methods:

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 seventeen 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 requirements if located within an existing pedestrian access route.

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 requirements of applicable zoning code chapter.

h. **Material and Color.** Small cell facility antennas, conduit, mounting hardware and cabinets shall be painted to match the color of the pole and shall be nonreflective.

i. **No Illumination.** Small cell facilities shall not be illuminated.

j. **Generators and Backup Battery.** Applicant shall not install any generators or backup battery power.

k. **Underground Areas and Design Zone Aesthetics.** The design plans for all small cell facilities in design zones shall be compatible with the character and aesthetics of the neighborhoods, plazas, boulevards, parks, public spaces, and commercial districts located in whole or in part within the design zone. Applicant shall propose design concepts and the use of camouflage or stealth materials, as necessary to blend its installations with the overall character of the design zone. Applicants are encouraged to meet with the city prior to submitting a concealment element plan subject to this section and other applicable city code.



Examples of a well-designed small cell facility



Examples of a poorly designed small cell facility

2. Third Party Requirements.

- a. All installations of small cell facilities must have permission from the pole/structure owner to install facilities on such structure.
- b. 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.
- c. 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.
- d. 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.

C. Ground-mounted equipment—ADA compliance required.

In areas of the city where overhead utility lines have been undergrounded (undergrounded areas), in designated design zones 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 in order 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 in accordance with Chapter 17.220.

C. Design Review.

Small cell deployment, as well as certain new or replacement facilities, are subject to applicable design review and other zoning code requirements as set forth in the Stanwood municipal code.

D. Public Comment.

The City shall provide notice of a complete application for a franchise on the City's website with a link to the franchise application. This notice requirement shall also apply to existing franchisees applying for a Small Cell Permit for small cell deployment. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. The City shall post meeting notices, if any, for informational meetings on its website. These meetings are for the public's information and are neither hearings nor part of any land use appeal process.

17.210.70 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 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 applicable city code.

B. Right-of-way permits to install small cell facilities including approval of deviations shall be processed within ninety days of receipt of a complete application and final approval of a franchise, whichever occurs last. A right-of-way use permit for small cell deployment is a police power regulation adopted pursuant to RCW 35.99.040(2) and

accordingly is not subject to the thirty-day use permit issuance requirement contained in RCW 35.99.030(2).

C. 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 appeal under city code or further legislative review.

D. Wireless communication facilities other than small cell deployment in the public right-of-way shall be reviewed pursuant to Section 17.220.020.

17.210.070 Facilities Designated in the Franchise and/or Small Cell Permit Application.

Small cell deployments may be approved by reference to exhibits in an approved franchise. Approval of the franchise shall be deemed to approve the site and the design of small cell facilities set forth in the franchise. This approval is limited to the specific location, facility and design elements shown on the exhibits to the franchise. Any element not shown on an exhibit must be approved by the Director governing review processes listed in the applicable provisions of the SMC. All facilities shall comply with the concealment standards adopted by the City. An existing franchisee may, at its option:

1. Apply to amend the existing franchise to designate sites for small cell deployment, as well as approve the small cell facilities to be installed and the concealment measures to be utilized; and/or

2. Apply for a Small Cell Permit which shall include:

(i) Small cell facilities to be installed on existing utility poles, or replacement poles which do not exceed 10 feet in additional height; utilize the concealment option provided this chapter; and/or

(ii) Small cell facilities which comply with generally applicable objective design standards adopted by the City; and/or

(iii) Small cell facilities which require new utility poles or for replacement poles which exceed 10 feet in additional, height, new utility poles or installations in a

specially designated zone or overlay, utilize the applicable design approval procedures set adopted by the City.

17.210.080 Small Cell Permit and Minor Deviations.

1. The Director shall review applications for Small Cell Permits for small cell deployments approved by a franchise or described in a concurrent franchise application. The Director may authorize minor deviations in the Small Cell Permit from the dimensional design and concealment technologies referenced in the exhibits to the franchise or design standards.

2. A deviation in height of the pole of up to ten (10) feet above the height of the existing pole when required for separation established for the zoning district, by the franchise or from a design approved for a specially designated design zone may be permitted.

3. Deviations in the dimensions or volume of small cell facilities which do not exceed the cumulative total provided by the definition of a small cell or microcell facility in RCW 80.36.375 may be considered a minor deviation when an applicant replaces components of an existing, approved small cell facility. Similarly, the addition of antennae on a pole, not to exceed a cumulative total of six (6) cubic feet shall be considered a minor deviation. Provided, however, that in each instance the new or revised facilities do not defeat the concealment features set by City's generally applicable pole design standard adopted pursuant to the franchise, or city code.

4. Small Cell Permits to install facilities including approval of minor deviations shall be processed **within ninety (90) days** of receipt of a complete application and final approval of a franchise, whichever occurs last.

5. The decision of the Director to approve a Small Cell Permit with a minor deviation, if any, shall be final and is not subject to appeal under City code or further legislative review.

17.210.090 Significant Deviations.

Any request for significant deviations from the approved small cell facilities design designated in the franchise, Small Cell Permit or City's design standards shall be considered under the provisions of **Chapter 17.210 SMC** and pursuant to the timelines

established in Chapter 17.210 SMC. An applicant seeking approval of a new pole or a replacement pole in a specially designated specially designated design zone shall be subject to the same review process as identified in 17.210 SMC.

17.210.100 Wireless Communication Franchise and Small Cell Deployment Facility Approvals and Processes

Approval of a franchise, Small Cell Permit and/or other approval referenced in this chapter are conditioned on the following requirements:

1. Satisfy applicable bulk requirements such as noise and light regulations.
2. Comply with adopted design and concealment standards, applicable to replacement utility poles and new utility poles in a Design Zone or Undergrounded Areas District.
3. Obtain the written approval of the owner of any utility pole for the installation of its facilities on such utility pole. Approval of a franchise does not authorize attachment to City- owned utility poles or other structures.
4. Unless specifically provided for in a franchise, obtain a lease from the City to utilize the City's ground space for the installation of any new pole, a replacement utility pole over sixty (60) feet or to locate any new ground based structure, base station or other attendant equipment on City right-of-way or City property;
5. Comply with all City construction standards and State and federal codes when operating in the right-of-way and obtain a required permit to enter the right-of-way.
6. A franchise which includes a facility which is not exempt from SEPA review shall be processed in the provisions of chapter 17.210 SMC
7. Small Cell facilities approved pursuant to this chapter shall be considered as an outright permitted use when located within the right-of-way.

17.210.100 Small Cell Application Review.

1. Application. The Director shall prepare and make publicly available an application form which shall be limited to the information necessary for the City to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

2. Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the Director shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

3. Timeframe for Review. Within sixty (60) days of the date on which an applicant submits an application seeking approval under this Chapter, the Director shall approve the application unless it determines that the application is not covered by this Section.

4. Tolling of the Time Frame for Review. The sixty (60) day review period begins to run when the application is filed, and may be tolled only by mutual agreement by the Director and the applicant or in cases where the Director determines that the application is incomplete. The timeframe for review of an Eligible Facilities Request is not tolled by a moratorium on the review of applications.

a. To toll the timeframe for incompleteness, the Director shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.

b. The timeframe for review begins running again when the applicant makes supplemental submission in response to the Director's notice of incompleteness.

c. Following a supplemental submission, the Director will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

17.210.120 Small cell facilities in undergrounded areas or design zones.

A. Replacement poles over forty-five feet in height and new street lights for small cell facilities to be constructed in any undergrounded area or design zone are permitted only when the applicant establishes that:

1. The small cell facility cannot be located on an electrical transmission tower or on a site outside of the public right-of-way such as a public park, public property, or in or on a nonresidential use in a residential zone whether by roof or panel-mount or separate structure; and
2. The proposed facility complies with an approved stealth installation plan as described in this section for an undergrounded area or design zone; and
3. The facilities shall comply with critical areas requirements and SEPA, if applicable; and
4. The applicant shall enter into an agreement with the owner of any new or replacement utility pole and/or street light within the public right-of-way and provide an executed copy of the agreement to the city prior to right-of-way permit issuance.

B. Stealth Installation Plan Required. Applications for proposed installations in underground areas and design zones which deviate for existing city design standards (or if the city has not created a design standard for that particular area) shall be required to submit a stealth installation plan. Such plan shall include the design of the screening, fencing or other concealment technology for a base station, tower, utility pole, or equipment structure, and all related transmission equipment or facilities associated with the proposed wireless facility, including but not limited to fiber and power connections.

1. Purpose of Stealth Installation Plan, Generally. Stealth installation plans should seek to minimize the visual obtrusiveness of installations using methods including, but 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.
2. Other stealth approaches may include, but not be limited to, use of architectural concealment products, fencing or screening materials, and where appropriate, landscape design, or any other camouflage strategies appropriate for the type of installation. Additionally, the use of a stealth support or concealment

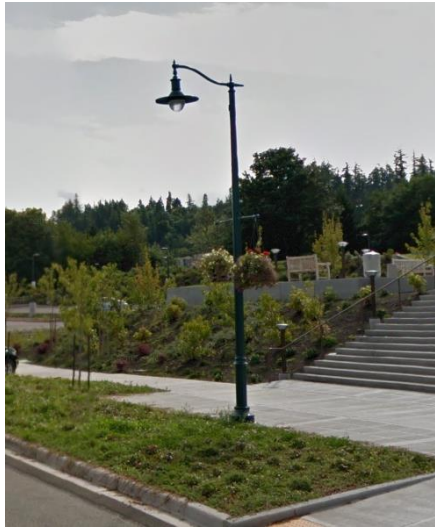
device, such as a clock tower, steeple, flagpole, tree, street sign, or other applicable concealment structure may be approved.

3. The director shall apply this section, as well as all design requirements applicable in the underground area or design zone in which an installation is proposed.

4. Review of Stealth Installation Plan for Nonsubstantial Change Colocations. Where a proposed collocation does not constitute a substantial change, a stealth installation plan shall be subject to ministerial review to ensure the proposed collocation does not defeat the concealment features approved as part of the initial installation at that location.

5. Review of Stealth Installation Plan for Initial Installations and Substantial Change Colocations. For initial installations and substantial change colocations in underground areas and design zones, the director shall conduct an administrative review of stealth installation plans for compliance with this section and all applicable city design guidelines.

C. Replacement Utility Pole—Street Lighting. With the director's approval, a replacement utility pole or a request for a new utility pole may be permitted in the form of a new street light. The design of the street light shall be in accordance with the examples below, subject to the director's approval. 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. See examples below.



Downtown Business and Mixed-Use Zones

Commercial Areas



D. Undergrounded Areas. 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 as provided in applicable city code.

E. Franchise and Small Cell Deployment Facility Approvals and Processes. Approval of a franchise, right-of-way permit and/or other approval referenced in this chapter are conditioned on the following requirements:

1. Satisfy applicable design requirements, including, but not limited to, noise and light regulations.
2. Comply with adopted design and concealment standards, applicable to replacement utility poles and new utility poles in a design zone or underground areas.
3. Obtain the written approval of the owner of any utility pole for the installation of its facilities on such utility pole. Unless specifically provided for in a franchise agreement, approval of a franchise does not authorize attachment to city-owned utility poles or other structures.
4. Comply with all city construction standards and state and federal codes and standards when operating in the right-of-way and obtain a required permit to enter the right-of-way.
5. A right-of-way permit for small cell deployment which includes a facility not exempt from SEPA review shall be processed in the provisions of the applicable city code.

17.210.130 Compliance with State Processing Limitations.

Review of franchise and Small Cell Permits shall comply with the provisions of RCW 35.99.030. Applications shall be reviewed, completeness determined and the timeframe tolled as provided in Chapter 17.156 SMC. A right-of-way use permit for small cell deployment is a police power regulation adopted pursuant to RCW 35.99.040(2) and accordingly is not subject to the thirty-day use permit issuance requirement contained in RCW 35.99.030(2)

17.210.140 Determination That An Application Is Not An Eligible Facilities Request.

If the Director determines that the applicant's request does not qualify as an Eligible Facilities Request, the Director shall deny the application. To the extent additional

information is necessary, the Director may request such information from the applicant to evaluate the application under other provisions of this Chapter and applicable law.

17.210.150 Additional review procedures.

Wireless communication facilities, including small cell facilities permitted pursuant to this chapter, are required to comply with all other applicable review procedures and regulations duly adopted by city code.

Chapter 17.220 WIRELESS COMMUNICATION FACILITIES (WCF) ATTACHED AND DETACHED

Sections:

- 17.220.010** Purpose.
- 17.220.020** Overall performance standards.
- 17.220.030** Application review time frame.
- 17.220.040** Additional review procedures.

17.220.010 Purpose.

In order to implement the purposes and policy set forth in the city's comprehensive plan, this chapter provides design and review procedures for wireless communications facilities. These provisions are intended to provide objective design criteria to assist in minimizing the visually obtrusive impacts which can be associated with wireless communications facilities and to encourage creative approaches in the location and construction of wireless communications facilities. Congress and the Federal Communications Commission ("FCC") have, pursuant to the authority granted by 47 USC Section 253(c) and 47 USC Section 332(a), required local governments to act on wireless communication facility applications within a reasonable period of time and have established time limits or "shot clocks" for local review. Accordingly, the city adopts the following time limits for review of applications for eligible facility requests, and other approvals for service providers of telecommunication services.

17.220.020 Overall performance standards.

A. Wireless Communication Facilities (WCF) (Attached and Detached). Attached and detached wireless communications facilities other than small cell facilities permitted pursuant to Chapter 17.210 or eligible facilities requests shall meet the following performance standards:

1. any special zones or facilities that you would like to require a CUP???

2. Separation Distance. In all single-family residential and commercial districts, detached WCFs except for small cell facilities shall be separated by a distance equal to or greater than one thousand three hundred twenty linear feet. WCFs that are colocated upon a single support structure shall count as a single WCF for the purposes of this subsection.

3. Setbacks. Attached and detached WCFs reviewed under this section shall not be located within any required setback areas; provided, however, the setback requirement for underground facilities shall be a minimum of five feet from any property line, except where:

- a. Structures which exceed forty-five feet in height shall be set back from any lot line five feet more than that specified in the individual zone for every ten feet, or fraction thereof, over forty-five feet of height.
- b. The required setback, as listed above, may be reduced by the planning director, if the applicant can demonstrate to the planning director's satisfaction that the reduced setback would result in a greater natural vegetative screening of the WCF than would have been provided by meeting the WCF development regulations.
- c. All equipment shelters, cabinets, or other on-the-ground ancillary equipment shall meet the setback requirements of the zone in which located, except that the rear setback requirement may be reduced to five feet if the structure meets all other standards.

4. Height. In single-family, multifamily residential and public zones the maximum combined height limit shall be sixty feet. In commercial and industrial zones the combined height of the WCF and any support structure shall not exceed eighty-five feet, except when colocation is specifically provided for, the combined height shall not exceed one hundred feet. The applicant shall demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs, which might result in lower heights. Utility poles, streetlights and traffic signals may be exempted from the height limitation at the discretion of the planning director. If additional height over that allowed in the zone is justified, it may be allowed through the conditional use permit process.

Commented [BV7]: This seems to be standard but it also seems pretty tall

5. Landscaping. Equipment shelters and cabinets and other on-the-ground ancillary equipment shall be screened using Type _____ and ten feet of Type _____ landscaping around the enclosure in accordance with the requirements contained in Chapter _____, Landscaping, of the Stanwood Municipal Code. Support structures shall be landscaped using Type _____ screening around the

Commented [BV8]: Plug in your desired permit type of landscaping

compound's perimeter. Trees with significant height and fullness upon maturity shall also be used to visually screen the tower from adjacent properties.

6. Lighting. Except as specifically requested by the Federal Aviation Administration (FAA) or the Federal Communication Commission (FCC), transmission structures shall not be illuminated, except transmitter equipment shelters may use lighting for security reasons as long as the light is shielded downward to remain within the boundaries of the site.

7. Concealment Technology. All WCFs shall employ concealment technology in their design, construction, and maintenance and reduce the WCFs' aesthetic impacts to the maximum extent possible. Such concealment technology shall include, at a minimum, the following:

- a. All antenna support structures and antennas shall be painted a nonreflective color, approved by the planning director, which blends into the nearby surroundings of the WCF so as to minimize the visual impact of the support structure or antennas.
- b. New antenna support structures shall be located in such a manner that existing trees on the site are used to screen the WCF from view from roadways, residences, and other properties; provided, however, that all WCFs shall be designed in a manner which minimizes the need for removal of existing trees.
- c. To the maximum extent possible, WCFs shall be designed to resemble an object other than a WCF which is already present in the local environment, such as a tree, a streetlight or a traffic signal. It may include the use of colors or materials to blend into the building materials from which a structure is constructed. Examples of concealment technology include, but are not limited to, the use of innovative site design techniques, existing or new vegetation and landscaping, paint and other surface treatments, alternative antenna configuration and/or selection, utilization of antenna support structures designed to resemble trees, and any other practice which screens the WCF from observation from roadways, residences, and other properties or otherwise has the effect of reducing the aesthetic impacts associated with the WCF.

8. Noise. No equipment shall be operated at a WCF (attached or detached) so as to produce noise in excess of the applicable noise standards under applicable municipal code, except for in emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis. Air conditioning and ventilation equipment associated with the ancillary equipment of the WCF shall be designed and configured in a manner so that noise impacts on adjacent properties with residential uses are minimized to the maximum extent

practicable through the use of baffling and/or other noise attenuation techniques and that the noise levels generated by the ancillary equipment otherwise comply with applicable noise regulations adopted by the city. In descending order, preference shall be given to the following configurations of air conditioning and ventilation equipment: (a) orientation toward properties with nonresidential uses; (b) orientation toward streets; and (c) orientation toward the furthest residential use.

9. Colocation. It is the policy of the city to minimize the number of detached WCFs and to encourage the colocation of more than one WCF on a single support tower. No new detached WCFs may be constructed unless it can be demonstrated to the satisfaction of the permit authority that existing support towers are not available for colocation of an additional WCF, or that their specific locations do not satisfy the operational requirements of the applicant. In addition, all detached WCFs shall be designed to promote facility and site sharing. All facilities shall make available unused space for colocation of other telecommunication facilities, including space for those entities providing similar, competing services. Colocation is not required if the host facility can demonstrate that the addition of the new service or facilities would impair existing service or cause the host to go offline for a period of time. Nothing in this section shall prohibit the owner of an existing facility from charging a reasonable fee for colocation of other telecommunications facilities.

10. Abandonment and Obsolescence. A WCF shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair.

11. Maintenance. All WCFs shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

12. Electromagnetic Emissions. All applicants shall demonstrate compliance with all applicable FCC regulations regarding the radio-frequency emissions of WCFs. If at any time radio-frequency emissions exceed any of the standards established by the FCC, the applicant shall immediately discontinue use of the WCF and notify the city. Use of the WCF may not resume until the applicant demonstrates that corrections have been completed which reduce the radio-frequency emissions to levels permitted by the FCC.

13. Special Exceptions. When adherence to the development standards would result in a significant gap in coverage for a WCF or prevent an applicant from addressing a significant capacity need, a special exception may be granted by the approval authority if the permit authority determines that the proposal utilizes the least intrusive means of closing the gap in coverage or addressing the capacity need, as applicable. The applicant has the burden of proof of establishing the gap or need and that the proposal is the least intrusive means of so doing.

14. Use of City Right-of-Way. Any telecommunications carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunication facilities in, under, over, or across any public right-of-way of the city for the purpose of providing telecommunications services shall obtain permission from the city, and enter into a right-of-way franchise agreement authorizing use of the city right-of-way. Small cells attached to utility poles, streetlights and traffic signals are exempted from the setback requirements.

15. Conditional Use Permit Criteria. In addition to any performance standards for conditional use permits under applicable municipal code, a conditional use permit for a detached WCF other than a small cell in the public right-of-way shall only be approved if the wireless provider can demonstrate that no other attached WCF alternative(s) are available that can provide the same level of service coverage to the targeted area.

17.220.030 Application review time frame.

A. Eligible Facilities Request.

1. Application. The director shall prepare and make publicly available an application form which shall be limited to the information necessary for the city to consider whether an application is an eligible facilities request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

2. Type of Review. Upon receipt of an application for an eligible facilities request pursuant to this chapter, the director shall review such application to determine whether the application qualifies as an eligible facilities request.

3. Time Frame for Review. Within sixty days of the date on which an applicant submits an application seeking approval under this chapter, the director shall approve the application unless it determines that the application is not covered by this section.

4. Tolling of the Time Frame for Review. The sixty-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by the director and the applicant or in cases where the director determines that the application is incomplete. The time frame for review of an eligible facilities request is not tolled by a moratorium on the review of applications.

- a. To toll the time frame for incompleteness, the director shall provide written notice to the applicant within thirty days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.

b. The time frame for review begins running again when the applicant makes supplemental submission in response to the director's notice of incompleteness.

c. Following a supplemental submission, the director will notify the applicant within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

5. Determination That Application Is Not an Eligible Facilities Request. If the director determines that the applicant's request does not qualify as an eligible facilities request, the director shall deny the application. In the alternative, to the extent additional information is necessary, the director may request such information from the applicant to evaluate the application under other provisions of this chapter and applicable law.

6. Failure to Act. In the event the director fails to approve or deny a request for an eligible facilities request within the time frame for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

7. Remedies. Both the applicant and the city may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

B. Colocation. Eligible colocations other than those defined in this section shall be processed within ninety days of receipt of a complete application. The director will notify the applicant within thirty days of receipt of an application whether it is complete or if additional information is required. The term "colocation" shall not apply to the initial placement of a small cell facility on a utility pole or on any other base station or tower that was not constructed for the sole or primary purpose of an FCC-licensed antenna and their associated facilities.

C. New Wireless Communication Facilities. New wireless communications facilities shall be processed within one hundred and fifty days of receipt of a complete application. The director will notify the applicant within thirty days of receipt of an application whether it is complete or if additional information is required.

17.220.040 Additional review procedures.

Wireless communication facilities are required to comply with all other applicable review procedures and regulations duly adopted by city code.