



# CITY OF MUKILTEO

## REQUEST FOR COMMENTS

DATE: February 25, 2019

X	Alderwood Water District – Dan Sheil /Lauren Balisky		Puget Sound Clean Air Agency (Beth Carper)
	Burlington Northern Santa Fe Railway (Marvinique Hill)	X	Puget Sound Energy (Dom Amor)
X	City of Edmonds (Rob Chave)	X	Puget Sound Regional Council
X	City of Everett (Allan Giffen)		Seattle Dist. Corps of Engineers (Dept. Army-Reg. Branch)
X	City of Everett (Steve Ingalsbe)	X	Snohomish Co. Airport/Paine Field (A. Rardin/B. Dolan)
X	City of Lynnwood (Paul Krauss)	X	Snohomish Co. Assessor’s Office ( <i>Ordinances Only</i> )
X	City of Mill Creek (Tom Rogers)		Snohomish Co. Conservation District
X	City of Mukilteo (Building Official)		Snohomish Co. Environmental (Cheryl Sullivan)
X	City of Mukilteo (Fire Chief)		Snohomish Co. Fire District #1 (Kevin Zweber)
X	City of Mukilteo (Fire Marshal)		Snohomish Co. Marine Res. Comm. (Kathleen Herrmann)
X	City of Mukilteo (Engineering “In-Box”)	X	Snohomish Co. Planning & Dev. Srvc. (Darryl Easton)
X	City of Mukilteo (Com. Dev. Dir.)( <i>Postcard/Notice only</i> )		Snohomish Co. Public Works (Deb Werdal)
X	City of Mukilteo (Cheol Kang, Glen Koen)	X	Snohomish Co. PUD: Dist. Eng. Services (Mary Wicklund)
X	Comcast of Washington (Casey Brown)		Snohomish Health District (Bruce A. Straughn)
X	Community Transit (Kate Tourtellot)	X	Sound Transit Authority (Perry Weinberg)
X	Dept. of Commerce (Growth Mgmt. Svcs Rev. Team)	X	Tulalip Tribes
	Dept. of Natural Resources (James Taylor)	X	Tulalip Tribes – (Richard Young)
	FAA/Air Traffic Division, ANM-0520 (Daniel Shoemaker)		United States Postal Service (Soon H. Kim)
	FEMA (John Graves)	X	Verizon Company of the NW, Inc. (Tim Rennick.)
	Island County MRC (Rex Porter) ( <i>Shoreline Only</i> )	X	Washington Dept. of Ecology (Peg Plummer)
X	Master Builders King/Sno. Counties (Jennifer Anderson)		Washington Dept of Fish & Wildlife (Jamie Bails)
X	Mukilteo Beacon (Editor) ( <i>Postcard/Notice only</i> )	X	WSDOT (Scott Rodman)
X	Mukilteo School District (Cindy Steigerwald)	X	WSDOT (Ramin Pazooki)
X	Mukilteo School District (Josette Fisher)		WSDOT Ferries(Kevin Bartoy) ( <i>Shoreline Only</i> )
X	Mukilteo Tribune (Editor) ( <i>Postcard/Notice only</i> )		WRIA 7 Water Resources
X	Mukilteo Water & Wastewater District (Jim Voetberg, Manager; Rick Matthews; Jodi Kerslake)	X	Planning Commission ( <i>Postcard Only</i> )
	National Marine Fishery Service		Adjacent Property Owners
	Office of Archaeology & Historic Pres. (Allyson Brooks)		Applicant/Contact Person ( <i>Notice Only</i> )
X	Ogden, Murphy, Wallace (Scott Snyder) ( <i>Ordinances Only</i> )	X	Parties of Interest
	Pilchuck Audubon Society (Karen Snyder)		Parties of Record
X	Port of Everett (Graham Anderson)		Property Owners within 300’ ( <i>Postcard/Notice Only</i> )
			Other:

FILE NO.: CA-2019-001

PROPONENT: City of Mukilteo

PROPOSAL NAME: Wireless Communication Facilities Code Amendment

PROPOSAL DESCRIPTION: Amend Mukilteo Municipal Code to update the federal regulatory requirements with respect to review timelines for Wireless Communication Facilities and small cell deployment per the Federal Communications Commission Order dated September 27, 2018.

FILE NO.: CA-2019-001

PROPONENT: City of Mukilteo

PROPOSAL NAME: Wireless Communication Facilities Code Amendment

ATTACHED IS:

X	Notice of Proposed Ordinance		Plat Map (Reduced)
X	DNS		Site Plan (Reduced)
X	Environmental Checklist		Location Map
	Application		Vicinity Map
X	Ordinances (draft)		Other:

NOTE: \_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

Please review this project as it relates to your area of concern and return your comments with this cover sheet by, Monday, March 11, 2019 to Linda Ritter, Senior Planner, City of Mukilteo, 11930 Cyrus Way, Mukilteo, WA 98275.

  
Linda Ritter  
Senior Planner

2/22/19  
Date

\*\*\*\*\*

RESPONSE SECTION:

Comments Attached

No Comments

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

**DO YOU WANT A COPY OF OUR NOTICE OF DECISION**

**YES**  **NO**



11930 Cyrus Way  
Mukilteo, WA 98275  
Fax (425) 290-1009

City of Mukilteo, Washington  
**Notice of a Proposed Ordinance**  
amending the Mukilteo Municipal Code  
related to Wireless Communication Facilities  
and

**Notice of Issuance of a SEPA**  
Determination of Non-Significance

This notice is to inform all members of the public that the City of Mukilteo is processing a proposed ordinance amending the Mukilteo Municipal Code (MMC) and has issued a Determination of Non-Significance (DNS) on the non-project action. (With respect to the State Environmental Policy Act (SEPA), the signed DNS is attached. )

Summary information about the Proposed Ordinance and SEPA determination are as follows:

**PROPOSAL NAME:** Wireless Communication Facilities (WCF) Code Amendment (City File NO. CA-2019-001)

**DESCRIPTION OF PROPOSAL:** Amendments to Mukilteo Municipal Code Chapter 5.45 (“Regulation of Wireless Communication Facility Franchise”), Chapter 17.08 (“Definitions”) and Chapter 17.17 (“Wireless Communication Facility (WCF) Attached and Detached”) responding to the Federal Communication Commission (FCC) Order related to Wireless Communication Facilities permit processing timelines and small cell deployment in the public right-of-way and on private property. The FCC Order went into effect January 14, 2019.

**PROPONENT:** City of Mukilteo Community Development Department  
City of Mukilteo Public Works Department

**LOCATION:** Citywide

**LEAD AGENCY:** City of Mukilteo

A DNS has been issued under WAC 197-11-340(2). The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An Environmental Impact Statement is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency.

**DNS AVAILABILITY:** Copies of the DNS are available on the City of Mukilteo website at <https://mukilteowa.gov/land-use-action-notices/> and also from the City of Mukilteo Community Development Department, 11930 Cyrus Way, Mukilteo, WA 98275, (425) 263-8000.

**List of Required Actions:** Recommendation by Mukilteo Planning Commission with final adoption of the ordinance by Mukilteo City Council. State Agency review in accordance with RCW 36.70A.106.

**Public Hearings:** The Mukilteo Planning Commission, in accordance with State of Washington planning laws, Mukilteo Municipal Code and other regulations, has jurisdiction to hear and consider this matter and to forward their recommendation on the proposal to the Mukilteo City Council. The Planning Commission will hold a public hearing on this matter, scheduled for **March 21, 2019**. Following that, the City Council will hold a public hearing, tentatively scheduled for April/May 2019. The public is welcome to provide written and oral testimony at the public hearings.

**SEPA COMMENT**

**Notice of Proposal Issued:** Monday, February 25, 2019  
**End of SEPA Comment Period:** Monday, March 11, 2019 at 4:30pm  
**SEPA Appeal Period:** Monday March 25, 2019 at 4:30pm

The SEPA Determination is appealable to the City of Mukilteo’s Hearing Examiner. An appeal must be filed by 4:30 p.m. Monday, March 25, 2019. To appeal, an appeal form must be completed and nonrefundable appeal fee paid. Appellants should be prepared to make specific factual objections.

**Contact Person:** Linda Ritter, Senior Planner (425) 263-8043

Signature:   
Linda Ritter, Senior Planner

Date: 2/22/19

**Date Issued:** Monday, February 25, 2019  
**Date Advertised:** Monday, February 25, 2019

pc: Review Agencies Parties of Interest CDD Director  
Newspaper Project File Permit Staff (3)



City of Mukilteo, Washington  
**DETERMINATION OF  
NONSIGNIFICANCE (DNS)**

11930 Cyrus Way, Mukilteo, WA 98275

**PROPOSAL NAME:** Wireless Communication Facilities Code Amendment (City File NO. CA-2019-001)

**DESCRIPTION OF PROPOSAL:** Amendments to Mukilteo Municipal Code Chapter 5.45 (“Regulation of Wireless Communication Facility Franchise”), Chapter 17.08 (“Definitions”) and Chapter 17.17 (“Wireless Communication Facility (WCF) Attached and Detached”) responding to the Federal Communication Commission (FCC) Order related to Wireless Communication Facilities permit processing timelines and small cell deployment in the public right-of-way and on private property. The FCC Order went into effect January 14, 2019.

**PROPONENT:** City of Mukilteo Community Development Department  
City of Mukilteo Public Works Department

**DATE OF ISSUANCE:** February 25, 2019

**LOCATION OF PROPOSAL:** Citywide

**LEAD AGENCY:** City of Mukilteo

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An Environmental Impact Statement is not required under RCW43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency.

**COMMENT PERIOD:** This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the issue date. The public is invited to comment on this DNS by submitting written comments no later than **Monday, March 11, 2019, 4:30pm** to the City of Mukilteo Community Development Department at the address below.

**APPEALS:** You may appeal this determination by filling out the appeal form and submitting it with the applicable appeal fee to the City of Mukilteo Community Development Department, 11930 Cyrus Way, Mukilteo, WA 98275 by **Monday, March 25, 2019, 4:30pm**. Contact the Community Development Department to read or ask about the procedures for SEPA appeals.

**DNS AVAILABILITY:** Copies of the DNS are available on the City of Mukilteo website at <https://mukilteowa.gov/land-use-action-notices/> and also from the City of Mukilteo Community Development Department, 11930 Cyrus Way, Mukilteo, WA 98275, (425) 263-8000.

**CONTACT PERSON:** Linda Ritter, Senior Planner (425) 263-8043; lritter@mukilteowa.gov

**Signature:**

David Osaki

Date: FEB. 22, 2019

David Osaki  
Community Development Director/  
SEPA Responsible Official

pc: Review Agencies  
Newspaper

Parties of Interest  
Project File

CDD Director  
Permit Staff (3)



# CITY OF MUKILTEO

## ENVIRONMENTAL CHECKLIST

### ***Purpose of checklist:***

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

### ***Instructions for applicants:***

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

### ***Instructions for Lead Agencies:***

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

### ***Use of checklist for nonproject proposals:***

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the [SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS \(part D\)](#). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

## A. Background

1. Name of proposed project, if applicable:  
***Wireless Communication Facilities Code Amendment***
2. Name of applicant:  
***City of Mukilteo***
3. Address and phone number of applicant and contact person:  
***Linda Ritter***  
***Senior Planner***  
***11930 Cyrus Way***  
***Mukilteo WA 98275***  
***425-263-8043***
4. Date checklist prepared:  
***February 13, 2019***
5. Agency requesting checklist:  
***City of Mukilteo***
6. Proposed timing or schedule (including phasing, if applicable):  
***N/A***
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.  
***N/A***
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.  
***This checklist***
9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.  
***N/A***
10. List any government approvals or permits that will be needed for your proposal, if known.  
***The proposed amendments are to be reviewed by the Washington State Department of Commerce. The Mukilteo City Council approves the amendments.***
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)  
***The Federal Communications Commission (FCC) released a new Declaratory Ruling and Third Report and Order (the "Order") on September 27, 2018, adopting new rules limiting how state and local governments may treat applications for the installation of small***



**wireless facilities on public property and other property located inside and outside the public rights-of-way. The Order went into effect January 14, 2019 and local jurisdictions have until April 14, 2019 to have aesthetic rules in place. Amending the Mukilteo Municipal Code to meet the federal regulatory requirements with respect to review timeline for Wireless Communication Facilities (WCF) and small cell deployment as follows:**

- **Amending Chapter 5.45 MMC -Regulation of Wireless Communication Facility Franchise**
- **Amending Chapter 17.08 MMC -Definitions**
- **Amending Chapter 17.17 MMC - Wireless Communication Facility (WCF) Attached and Detached**

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

**These amendments apply citywide.**

## **B. ENVIRONMENTAL ELEMENTS**

### **1. Earth**

a. General description of the site:

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other \_\_\_\_\_

***The City of Mukilteo's physical topography ranges from relatively flat lands to steep sloped ravines and coastal bluffs. Commercial and Industrial areas, and Public Semi-Public zones where service stations are located mostly on flat or nearly-flat areas.***

b. What is the steepest slope on the site (approximate percent slope)?

***0-100%***

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

***Primarily Vashon Till (Glacial) and Sand with sand lenses. There are no farmlands.***

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

***Coastal Bluffs and side slopes in the gulches and ravines have a history of being unstable.***

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

***N/A. This is a non-project action.***

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. [

***N/A. This is a non-project action.***

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

***N/A. This is a non-project action.***

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

***N/A. This is a non-project action.***

## **2. Air**

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

***N/A. This is a non-project action.***

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

***N/A. This is a non-project action.***

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

***N/A. This is a non-project action.***

## **3. Water**

a. Surface Water:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

***The City of Mukilteo is surrounded by Port Gardner Bay to the north and Possession Bay to the west. Physically the City and its urban growth area has fourteen (14) steep sloped ravines with small streams and drainage ways that feed into Possession Bay or Lake Washington.***

***Upland there are several wetland systems that feed into these ravines and drainage ways. Japanese, Big, and Picnic Point Gulches are the largest and most critical ravine and stream systems in the City. Lake Serene also lies within the City's MUGA area.***

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

***N/A. This is a non-project action.***

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

***N/A. This is a non-project action for WCF amendments to the code. No known wetlands or streams will be impacted by these amendments.***

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

***N/A. This is a non-project action.***

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

***Mukilteo has two areas within a 100-year flood plain: North Mukilteo in the vicinity of Front Street and Mid Mukilteo, the Naketa Beach area west of the BNSF railroad tracks.***

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

***N/A. This is a non-project action.***

b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

***N/A. This is a non-project action.***

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

***The majority of the City is on public water and sewer. Properties subject to redevelopment or development are either currently being served by public services or will be required to connect to the public system prior to acceptance or occupancy of their proposed development.***

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

***Not applicable. This non-project action proposes regulations for small cell deployment of WCF.***

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

***N/A. This is a non-project action.***

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

***N/A. This is a non-project action.***

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

***N/A. This is a non-project action.***

#### 4. Plants

a. Check the types of vegetation found on the site:

deciduous tree: alder, maple, aspen, other

evergreen tree: fir, cedar, pine, other

shrubs

grass

pasture

crop or grain

orchards, vineyards or other permanent crops.

wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other

water plants: water lily, eelgrass, milfoil, other

other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

***N/A. This is a non-project action.***

c. List threatened and endangered species known to be on or near the site.

***No threatened or endangered plant species are known to exist in the City of Mukilteo.***

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

***N/A. This is a non-project action. The proposed WCF code amendment proposes landscaping to screen equipment cabinets and other ground equipment.***

e. List all noxious weeds and invasive species known to be on or near the site.

***N/A. This is a non-project action.***

## 5. Animals

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

Examples include:

birds: hawk, heron, eagle, songbirds, other:  
mammals: deer, bear, elk, beaver, other:  
fish: bass, salmon, trout, herring, shellfish, other \_\_\_\_\_

- b. List any threatened and endangered species known to be on or near the site.

***Marine species use Port Gardner Bay & Possession Sound, while bald eagles use Japanese Gulch, Mukilteo Olympic View Ravine, Big Gulch, and Lower Chennault Gulch. Heron have been seen in Japanese Gulch. The City has three active Eagle nesting areas: Japanese Gulch, Mukilteo Olympic View Ravine ( 76<sup>th</sup>/ 80<sup>th</sup> Street), and Possession Sound Park and Tidelands (Sector 11).***

***Specific threatened and endangered species include:***

***Bald Eagle nesting Territory – Threatened  
Potential Peregrine Falcon Foraging – Threatened  
Potential Steller Sea Lion Foraging – Threatened  
Puget Sound Chinook Salmon – Endangered  
Bull Trout – Endangered  
Steelhead - Threatened  
Orca - Endangered***

- c. Is the site part of a migration route? If so, explain.

***Yes, it is similar to the rest of the Puget Sound area.***

- d. Proposed measures to preserve or enhance wildlife, if any:

***The Comprehensive Plan contains policies requiring the protection of critical areas in the City. Any future development is required to meet the City's adopted critical area regulations, which include: steep slopes, wetlands, and fish and wildlife habitat (streams). Any development utilizing this amendment will be required to meet the critical area codes.***

- e. List any invasive animal species known to be on or near the site.

***None Known***

## 6. Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

***The City of Mukilteo is currently served with all the utilities necessary to serve an urban environment: public water, sewer, gas, power, telephone, and cable.***

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

***N/A. This is a non-project action.***

- c. What kinds of energy conservation features are included in the plans of this proposal?  
List other proposed measures to reduce or control energy impacts, if any:

**N/A. This is a non-project action.**

## 7. Environmental Health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

**N/A. This is a non-project action.**

- 1) Describe any known or possible contamination at the site from present or past uses.

**N/A. This is a non-project action.**

- 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

**N/A. This is a non-project action.**

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

**N/A. This is a non-project action.**

- 4) Describe special emergency services that might be required.

**N/A. This is a non-project action.**

- 5) Proposed measures to reduce or control environmental health hazards, if any:

**N/A. This is a non-project action.**

## b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

***Airport traffic, train, emergency services, and vehicle traffic***

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

**N/A. This is a non-project action.**

- 3) Proposed measures to reduce or control noise impacts, if any:

***City adopted noise regulations, MMC 8.18, establish noise thresholds for residential, commercial, and industrial zones. All subsequent development under these amendments will be required to comply with the City's noise ordinance.***

## 8. Land and Shoreline Use

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

***This proposed WCF code amendment applies city-wide and the land uses within the City range from vacant, parks and open space, single family residential, mix-use commercial, multi-family residential, commercial and industrial.***

- b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

***This is a non-project action. There are no on-going and sustainable agricultural lands in the City of Mukilteo. In the 19<sup>th</sup> Century to the mid 20<sup>th</sup> Century, various parcels in the City have been used for farm animals and fruit trees.***

- 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

***N/A. This is a non-project action. There are no on-going and sustainable agricultural lands in the City of Mukilteo.***

- c. Describe any structures on the site.

***N/A. This is a non-project action.***

- d. Will any structures be demolished? If so, what?

***N/A. This is a non-project action.***

- e. What is the current zoning classification of the site?

***All zoning districts are affected.***

- f. What is the current comprehensive plan designation of the site?

***The City's land use designations include:***

- ***Single family residential***
- ***Multi family residential***
- ***Commercial***
- ***Industrial***
- ***Mixed Use***
- ***Parks & Open Space***
- ***Public Use***

- g. If applicable, what is the current shoreline master program designation of the site?

***N/A. This is a non-project action.***

- h. Has any part of the site been classified as a critical area by the city or county? If so, specify.  
**Yes. Within the City are streams, wetlands, geologic sensitive areas (steep slopes), fish and wildlife habitat conservation areas, shorelines, and flood hazard areas.**
- i. Approximately how many people would reside or work in the completed project?  
**The current City of Mukilteo population is estimated to be 20,050.**
- j. Approximately how many people would the completed project displace?  
**N/A. This is a non-project action.**
- k. Proposed measures to avoid or reduce displacement impacts, if any:  
**N/A. This is a non-project action.**
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:  
**The proposed WCF code amendment is designed to implement the Comprehensive Plan goals and policies.**
- m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:  
**N/A. This is a non-project action.**

## 9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.  
**N/A. This is a non-project action.**
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.  
**N/A. This is a non-project action.**
- c. Proposed measures to reduce or control housing impacts, if any:  
**N/A. This is a non-project action.**

## 10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?  
**N/A. This is a non-project action.**
- b. What views in the immediate vicinity would be altered or obstructed?  
**N/A. This is a non-project action.**
- b. Proposed measures to reduce or control aesthetic impacts, if any:  
**N/A. This is a non-project action.**



## 11. Light and Glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

***N/A. This is a non-project action.***

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

***N/A. This is a non-project action.***

- c. What existing off-site sources of light or glare may affect your proposal?

***N/A. This is a non-project action.***

- d. Proposed measures to reduce or control light and glare impacts, if any:

***N/A. This is a non-project action.***

## 12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

***N/A. This is a non-project action.***

- b. Would the proposed project displace any existing recreational uses? If so, describe.

***N/A. This is a non-project action.***

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

***N/A. This is a non-project action.***

## 13. Historic and cultural preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe.

***The City of Mukilteo has a total of 10 properties listed on either the City, State, or Federal Register of Historic Places:***

- ***City Register: McNab-Hogland House, Epps House, Boys and Girls Club, Siemens House, and the Nelson House.***
- ***State Register: Point Elliot Treaty Site, Mukilteo Pioneer Cemetery, and the Fowler Pear Tree Site.***
- ***Federal Register: Mukilteo Light Station and Point Elliot Treaty Monument.***

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

**Some areas that are now within city boundaries are known to have been a Native American gathering places and seafood processing sites. Other areas are the site of the original non Native American Mukilteo settlement. Also, another area was the site of a Japanese residential area for mill workers. As such, there are some registered archaeological sites in the city.**

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

**N/A. This is a non-project action. Any work within a historical or cultural resources site will be approved by the Department of Archeological and Historic Preservation.**

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

**N/A. This is a non-project action. No changes or impacts to these historical sites are proposed as a part of the WCF Code Update. This will be determined during the project permit review process.**

#### 14. Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

**N/A. This is a non-project action.**

- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

**Yes, the City is served by Community Transit and Everett Transit with transit stops located in the area on SR525, 5th Street, Harbour Pointe Blvd., 47th Pl. W., and Chennault Beach Rd.**

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

**N/A. This is a non-project action.**

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

**N/A. This is a non-project action.**

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

**N/A. This is a non-project action.**

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

**N/A. This is a non-project action.**

g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

**N/A. This is a non-project action.**

h. Proposed measures to reduce or control transportation impacts, if any:

**N/A. This is a non-project action.**

**15. Public Services**

a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

**N/A. This is a non-project action.**

b. Proposed measures to reduce or control direct impacts on public services, if any.

**N/A. This is a non-project action.**

**16. Utilities**

a. Circle utilities currently available at the site:  
electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system,  
other \_\_\_\_\_

**All utilities are available in the City of Mukilteo**

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

**N/A. This is a non-project action.**

**C. Signature**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: \_\_\_\_\_

Name of signee \_\_\_\_\_

Position and Agency/Organization \_\_\_\_\_

Date Submitted: \_\_\_\_\_

## D. supplemental sheet for nonproject actions

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

***The proposed WCF code amendment will likely not increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise.***

Proposed measures to avoid or reduce such increases are:

***N/A. This is a non-project action.***

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

***N/A. This is a non-project action.***

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

***The proposed code amendment does not allow WCF in protected areas for plants, animals, fish or marine life.***

3. How would the proposal be likely to deplete energy or natural resources?

***The proposed WCF code amendment is not likely to deplete energy or natural resources.***

Proposed measures to protect or conserve energy and natural resources are:

***None***

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

***The proposed WCF code amendment allows should have no affect on areas designated for government protection. The proposed code amendments does not allow for WCF to be placed in such areas. WCF may be placed in a local park with the property owner's permission.***

Proposed measures to protect such resources or to avoid or reduce impacts are:

***N/A. This is a non-project action***

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?  
***The proposed WCF code amendment will likely not affect land and shoreline use and does not encourage uses incompatible with existing plans.***

Proposed measures to avoid or reduce shoreline and land use impacts are:

***N/A. This is a non-project action***

6. How would the proposal be likely to increase demands on transportation or public services and utilities?  
***The proposed WCF code amendment will not increase demands on transportation or public services and utilities.***

Proposed measures to reduce or respond to such demand(s) are:

***None***

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.  
***The proposed WCF code amendment will not conflict with local, state or federal laws or requirements for the protection of the environment.***

CITY OF MUKILTEO  
MUKILTEO, WASHINGTON

**ORDINANCE NO. 1426**

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO WIRELESS COMMUNICATION FACILITIES; AMENDING CHAPTER 5.45 MUKILTEO MUNICIPAL CODE (MMC) - REGULATION OF WIRELESS COMMUNICATION FACILITY FRANCHISE; AMENDING CHAPTER 17.08 MMC – DEFINITIONS; AMENDING CHAPTER 17.17 WIRELESS COMMUNICATION FACILITIES (WCF) ATTACHED AND DETACHED; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the Federal Communications Commission (FCC) and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996, Congress amended the Communications Act of 1934 and implemented regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunication market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, the City of Mukilteo adopted regulations in 1998 that have been codified as part of the Municipal Code establishing local requirements for the location, construction, and modification of wireless facilities; and

WHEREAS, Section 6409 of the Spectrum Act (“Section 6409”) implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, the Federal Communications Commission (FCC) issued, pursuant to its rule making authority, an Order clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409; and

WHEREAS, the Federal Communications Commission (FCC) released a new Declaratory Ruling and Third Report and Order (the "Order") on September 27, 2018 adopting new rules limiting how state and local governments may treat applications for the installation of small wireless facilities on public property and other property located inside and outside the public rights-of-way. The Order went into effect January 14, 2019 and local jurisdictions have until April 14, 2019 to have aesthetic rules in place;

WHEREAS, the City has complied with the requirements of the State Environmental Policy Act (SEPA) RCW Ch.43.21C by issuing a Determination of Nonsignificance (DNS) on February 19, 2019; and

WHEREAS, on March 21, 2019, the Planning Commission held a duly-noticed public meeting related to this proposed ordinance; and

WHEREAS, City Council finds that this ordinance for wireless communication facilities regulations is in the best interests of the citizens of the City of Mukilteo.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Chapter 5.45 MMC. Chapter 5.45 MMC - Regulation of Wireless Communication Facility Franchise, shall be amended to read as shown in Exhibit A

Section 2. Chapter 17.08 MMC. Chapter 17.08 MMC - Definitions, shall be amended to read as shown in Exhibit A.

Section 3. Chapter 17.17 MMC. Chapter 17.17 MMC - Wireless Communication Facilities (WCF) Attached and Detached, shall be amended to read as shown in Exhibit A

Section 4. Severability. If any section, sentence, clause, or phrase of this ordinance should held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 5. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 6. Enforcement. Violations of this Ordinance are punishable under Title 18 MMC and as otherwise provided by law, and are subject to injunctive and other forms of civil relief which the City may seek.

Section 7. Conflict. In the event that there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 8. Effective Date. This ordinance shall take effect and be in full force 5 days after publication of the attached summary.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2019.

APPROVED:

\_\_\_\_\_  
MAYOR JENNIFER GREGERSON

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
INTERIM CITY CLERK, NANCY PASSOVOY

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

\_\_\_\_\_  
DANIEL P. KENNY

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. 1426



SUMMARY OF ORDINANCE NO. 1426  
of the City of Mukilteo, Washington

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On \_\_\_\_\_, 2019, the City Council of the City of Mukilteo, Washington, approved Ordinance No. 1426, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO WIRELESS COMMUNICATION FACILITIES; AMENDING CHAPTER 5.45 MUKILTEO MUNICIPAL CODE (MMC) - REGULATION OF WIRELESS COMMUNICATION FACILITY FRANCHISE; AMENDING CHAPTER 17.08 MMC – DEFINITIONS; AMENDING CHAPTER 17.17 WIRELESS COMMUNICATION FACILITIES (WCF) ATTACHED AND DETACHED; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Interim City Clerk, Nancy Passovoy

## Chapter 17.08

### DEFINITIONS\*

Sections:

- 17.08.010 General.  
17.08.020 Definitions.

\* Prior ordinance history: Ords. 387, 442, 458, 519, 539, 552, 567, 639, 692, 699, 724, 870 and 892.

Chapter 17.08, Definitions, was reorganized at the city's direction to combine Section 17.08.005 and Sections 17.08.015 through 17.08.970 into a single Section 17.08.020, Definitions.

Ordinance 987, Section 1, repealed and recodified Section 17.52.090 to move the definitions to Section 17.08.020, and added and amended other definitions to Section 17.08.020.

#### **17.08.010 General.**

For the purposes of this title and to clarify the intent and meaning of certain words or terms, the following list of definitions is provided. All other words used in this title carry their customary meaning. Words in the present tense include the plural, and vice versa. Definitions associated with the use of shoreline or shoreline permits are contained in Title 17B, Shoreline Management Regulations. (Ord. 1295 § 5 (Exh. 1B), 2011; Ord. 908 § 5 (part), 1997)

#### **17.08.020 Definitions.**

“Antenna” is any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole, light standard, building or other structure for the purpose of providing wireless services.

“Antenna equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

“Antenna facility” means an antenna and associated antenna equipment.

“Antenna height” is the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater.

“Approved small cell facility” is any small cell facility that has received all required permits.

“Base station” is a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base station includes, without limitation:

1. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems (“DAS”) and small cell networks).
3. Any structure other than a tower that, at the time the relevant application is filed with (jurisdiction) under this section, supports or houses equipment described in subsections (1) and (2) of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

4. The term does not include any structure that, at the time the relevant application is filed with the city under this section, does not support or house equipment described in subsections (1) and (2) of this definition.

“Colocation” means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Provided that, for purposes of Eligible Facilities Requests, “collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. ~~is when more than one wireless communications provider mounts equipment on a single support structure (e.g., structure, monopole, lattice tower). For the purpose of an eligible facilities request the director shall refer to 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.~~

“Eligible facilities request” is any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1. Colocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment.

“Eligible support structure” is any tower or base station as defined in this section; provided, that it is existing at the time the relevant application is filed with the city.

“Equipment facility” is any structure used to contain ancillary equipment for a wireless communications facility which includes cabinets, shelters, a buildout of an existing structure, pedestals, and other similar structures.

“Equipment structure” is a facility, shelter, cabinet or vault used to house and protect electronic or other associated equipment necessary for processing wireless communications signals. “Associated equipment” may include, for example, air conditioning, backup power supplies and emergency generators.

“Microcells” is defined in accord with RCW 80.36.375.

“Personal wireless service facilities” means facilities for the provision of personal wireless services.

“Personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

“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.

“Site wireless communication facility” is defined as towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

“Small Wireless Facility cell” and “small cell network” has the same meaning as defined in 47 CFR 1.6002. are defined in accord with RCW 80.36.375.

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

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent 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 ten percent or more than ten feet, whichever is greater;

2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 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;
3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site;
5. It would defeat the concealment elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

“Structure” is a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

“Telecommunications service” is defined in accord with RCW 35.99.010(7).

“Temporary wireless communication facility” is a nonpermanent facility installed on a short-term basis, for the purpose of evaluating the technical feasibility of a particular site for placement of a WCF or for providing emergency communications during a natural disaster or other emergency. Examples of temporary WCFs include, but are not limited to, placement of an antenna upon a fully extended bucket truck, crane, or other device capable of reaching the height necessary to evaluate the site for placement of a WCF.

“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 fixed wireless services such as microwave backhaul and the associated site.

“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 associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Undergrounded areas” are public rights-of-way in which wireline utilities have been located or relocated underground.

“Unified enclosure” means a small wireless facility providing concealment of antennas and equipment within a single enclosure.

“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.

“View corridor/vista” means a distant view through or along a street or openings between structures.

“Wireless communication antenna array” is one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals through electromagnetic energy, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).

“Wireless communication facility” or “WCF” is any unstaffed facility for the transmission and/or reception of wireless communications services, usually consisting of an antenna array, transmission cables, equipment facilities, and support structure.

Wireless Communication Facility, Attached. “Attached wireless communication facility” is a wireless communication facility that is affixed to an existing structure, utility pole, traffic light, or water tower.

Wireless Communication Facility, Detached. “Detached wireless communication facility” is any wireless communication facility that is independent of any existing structure, utility pole, traffic light, or water tower.

“Wireless communication support structure” means a structure designed and constructed specifically to support an antenna array, and may include a monopole, self-supporting tower, guy-wire support tower, and other similar structures.

“Wireless communications” means any personal wireless services as designated in the Federal Telecommunications Act of 1996, which includes FCC-licensed commercial wireless telecommunications services including cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging, and similar services that currently exist or that may in the future be developed.

## Chapter 5.45

### REGULATIONS FOR SMALL CELL FRANCHISES

Sections:

Small ~~CeH~~ Wireless Facility Deployment—Franchise and Small Cell Permits

- 5.45.010 Overview.
- 5.45.020 Definitions.
- 5.45.030 Design zones designated.
- 5.45.040 Franchise application.
- 5.45.050 Application and designation of facilities.
- 5.45.060 Implementation—Right-of-way permits for small cell deployment.
- 5.45.070 Review process.
- 5.45.080 Right-of way permit for small cells and deviations.
- 5.45.090 Amendments to the franchise agreement.
- 5.45.110 Review of wireless communications facilities other than small cell deployments.
- 5.45.120 Ground-mounted equipment—ADA compliance required.
- 5.45.130 Small cell facilities in undergrounded areas or design zones.
- 5.45.140 Compliance with state processing limitations.
- 5.45.150 Determination that an application is not an eligible facilities request.
- 5.45.160 Additional review procedures.

#### Small Cell Deployment—Franchise and Small Cell Permits

##### **5.45.010 Overview.**

In order to manage its right-of-way in a thoughtful manner, the city of Mukilteo has adopted this process for the deployment of small cell and microcell technology. The process balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the city while complying with the requirements of state and federal law. Service providers who seek to utilize the public right-of-way for small cell deployment 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 right-of-way permit to deploy the technology. Entities with franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall utilize the processes set forth in this chapter to deploy their technology and obtain design approval of specific installations. The right-of-way permit process administers deployment under the franchise. An entity without a franchise shall apply for a franchise and adjunct right-of-way permit which shall be processed concurrently as one master permit within the meaning of RCW 35.99.010(3) and 35.99.030. For entities with a valid franchise, see Section 5.04.050.

- A. Nothing in this chapter revises or diminishes the rights and obligations of an existing franchise.
- B. The term “small cell deployment” shall include the deployment of small cell facilities, microcells and small cell networks as those terms are defined by ~~RCW 80.36.375~~ the Federal Communications Commission (“FCC”). Small cell deployment elements which require SEPA review may utilize these processes only in conjunction with SEPA review.
- C. Existing franchisees with franchises that do not specifically permit small cell and/or micro cell deployment shall be required to either amend their existing franchise or enter into a new franchise with the city.

##### **5.45.020 Definitions.**

See Chapter 17.08 for additional definitions.

##### **5.45.030 Design zones designated.**

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

- A. Downtown Business (DB); and
- B. Waterfront Mixed Use (WMU).

**5.45.040 Franchise application.**

Applicants shall apply using the city's franchise application form and submit a fee according to the city's fee schedule to process an application for a franchise. The director of public works "director" is charged with administration of small cell deployments and other wireless communication review processes established under this title and Title 12. All franchise applications shall designate the entire city right-of-way as the franchise boundary.

**5.45.050 Application and designation of facilities.**

The following information shall be provided by all applicants for franchises seeking small cell deployment. Existing franchisees who seek to implement an existing franchise for small cell deployment shall provide the following information as a part of their right-of-way permit application:

- A. The application shall identify and provide:
  1. Specific locational information including GIS coordinates of all proposed small cell deployment facilities;
  2. Whether and where small cell facilities are to be located on existing utility poles including city-owned light standards;
  3. Whether the deployment will utilize replacement utility poles, new poles, towers, and/or other structures and where such replacement will take place; and
  4. Detailed schematics and visual renderings of the facilities.
- B. Conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified regardless of whether these facilities are constructed by the applicant or leased from an infrastructure provider.
- C. Failure to provide sufficient detail may result in a later need to request a deviation 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 Section 5.45.080.

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

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

- A. Up to twenty sites may be specified in one right-of-way permit application for processing. At the discretion of the director, up to five additional sites may be included in order to consider small cell sites within one service area in one application.
- B. Issuance of a right-of-way permit to install a small cell deployment shall be contingent upon approval of a franchise or the possession of a valid franchise.
- C. If more than one application for a right-of-way permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application shall be considered first. All right-of-way permits which are submitted in conjunction with a franchise application shall be considered as one master permit. Any element of a deployment which qualifies as either an eligible facilities request or a colocation 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 Section 17.17.030~~.

- D. The director may approve, deny or conditionally approve all or any portion of the sites proposed in the right-of-way permit application.
- E. Any application for a right-of-way permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 17.84.
- 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 right-of-way permit for small cell deployment shall provide an RF certification for all facilities included in the deployment which are to be installed by the franchisee. If facilities which produce RF radiation are necessary to the small cell deployment and will be provided by another franchisee, then the small cell deployment in the initial franchise or in a subsequent right-of-way permit shall be conditioned on an RF certification showing that the cumulative impact of the RF emissions from the entire installation meets federal requirements.
- G. Regulatory Authorization. Issuance of the right-of-way permit for the facilities shall also be contingent upon the applicant's provision of proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.
- H. Completeness—Franchise and Small Cell Applications. The director or his/her designee shall review an application for completeness and notify the applicant within ~~ten~~<sup>thirty</sup> days of submission whether the application is materially incomplete; provided, however, that an applicant may consent to a different completeness review period. Such notification by the director or his/her designee shall include clear and specific identification of the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information. The shot clock restarts at zero when the City is in receipt of applicant's supplemental submission in response to the City's notice of incompleteness; or when mutually agreed by the network provider and City. A service provider may resubmit an application found incomplete within ninety 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 required fee deposit. (Ord. 1403 § 1 (Exh. A) (part), 2017)

#### **5.45.070 Review process.**

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

- A. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC Section 253 and 47 USC Section 332 and applicable case law. Applicants for franchises and the right-of-way permits which implement the franchise shall be treated in a competitively neutral and nondiscriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Franchise and right-of-way permit requirements shall not have the effect of prohibiting wireless telecommunications services by materially inhibiting the provision of such services. ~~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 as a design zone the city will permit small cell deployment on existing or replacement utility poles conforming to the city's generally applicable design standard pursuant to this chapter and in the franchise agreement. The design standards in this section seek to implement concealment of the small cell facilities. Accordingly, small cell facilities installed pursuant to this concealment authorization may be expanded pursuant to an eligible facilities request when 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 more than one small cell facility may be located on a single wooden utility pole. ~~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 17.17.020. The director may approve deviations as described in Section 5.45.080.

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 Section 5.45.080.

i. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.

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 should be placed in an effort to minimize visual clutter and obtrusiveness. No more than four antennas are permitted on a single utility pole without an engineers' report confirming that the pole can withstand the total load proposed for the pole. Each antenna enclosure shall not be more than three (3) cubic feet in volume. ~~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. 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, shall be no more than 28 cubic feet in volume. ~~Primary Equipment Enclosure Location and Dimensions-~~ The applicant shall minimize the ~~primary equipment enclosure~~ wireless equipment enclosure space and use the smallest amount of enclosure possible to fit the necessary equipment. The ~~primary wireless 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 constructed and located in the least visually intrusive manner feasible. ~~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 Chapter 17.16.

v. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed under ground or the applicant can demonstrate that pole mounted or undergrounded equipment is

technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.

vi. No equipment shall be operated so as to produce noise in violation of Chapter 8.18 MMC.

- 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 Section 5.45.130.



**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. Design Review. Small cell deployment in design zones and underground areas, as well as certain new or replacement facilities are subject to the design requirements provided for in the approved franchise and in this section and Section 5.45.130.

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 right-of-way 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 required 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.

**5.45.080 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 80.36.47](#) [CFR 1.6002375](#) 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 Section 5.45.070.~~

B. ~~The City shall make every reasonable effort, consistent with any applicable provisions of state or federal law, and the preservation of the City's health, safety and aesthetic environment, to comply with the Federal presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities to the fullest extent possible. 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.

#### **5.45.090 Amendments to the franchise agreement.**

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

#### **5.45.110 Review of wireless communications facilities other than small cell deployments.**

Wireless communication facilities other than small cell deployment in the public right-of-way shall be reviewed pursuant to Section 17.17.020.

#### **5.45.120 Ground-mounted equipment—ADA compliance required.**

In areas of the city where overhead utility lines have been undergrounded (undergrounded areas), in designated design zones (see Section 5.45.030), 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 17.17.

#### **5.45.130 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.

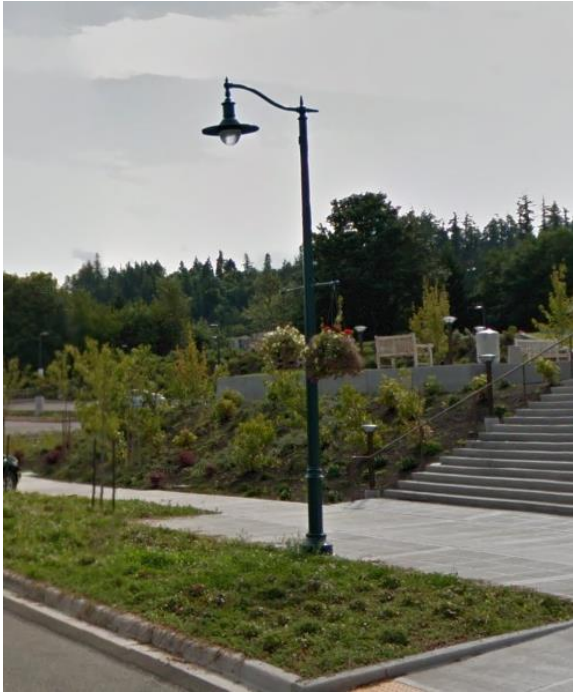


B. Stealth Installation Plan Required. Applications for proposed installations in underground areas and design zones which deviate ~~from~~ existing city design standards (or if the city has not created a design standard for that particular area) shall be required to submit a stealth installation plan. 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.

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<p>Downtown Business and Waterfront Mixed-Use Zones</p>	<p>Commercial Areas</p>
	
<p>Harbour Pointe Boulevard—South</p>	<p>Harbour Pointe Boulevard—North</p>

D. Undergrounded Areas. It is the stated policy of the city that all utilities shall be underground in areas that are currently underground. No new utility poles shall be erected in undergrounded areas. The applicant may request to install a new street light as provided in Sections 5.45.140 through 5.45.160.

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 undergrounded 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 Chapter 17.84.

Small cell facilities approved pursuant to this chapter shall be considered as an outright permitted use when located within the right-of-way. See the permitted use matrix in Section 17.16.040.

**~~5.45.140 — Compliance with state processing limitations.~~**

~~Review of franchise and right of way permits shall comply with the provisions of RCW 35.99.030. Applications shall be reviewed, completeness determined and the time frame tolled as provided in Section 17.17.030. 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). (Ord. 1403 § 1 (Exh. A) (part), 2017)~~

**5.45.150 Determination that an application is not an eligible facilities request.**

A. The director may request additional information if necessary from the applicant to evaluate the application under other provisions of this chapter and applicable law.

B. If the director determines that the applicant's request does not qualify as an eligible facilities request as defined in Section 17.08.020, then the director shall deny the application.

**5.45.160 Additional review procedures.**

Wireless communication facilities in design zones, shoreline management environments, undergrounded areas or critical areas are subject to review as provided in Chapter 17.17, Wireless Communication Facilities (WCF) Attached and Detached; Chapter 17.25A, Design Standards for the DB District; Chapter 17.25B, Mixed-Use Design Standards for the WMU District; Chapter 17.52, Critical Areas Regulations; Chapter 17.52A, Geologic Sensitive Area Regulations; Chapter 17.52B, Wetland Regulations; Chapter 17.52C, Fish and Wildlife Habitat Conservation Areas (Outside Shoreline Jurisdiction); and Chapter 17.52E, Shoreline Regulations. See also Chapter 17.84 regarding SEPA.

## Chapter 17.17

### WIRELESS COMMUNICATION FACILITIES (WCF) ATTACHED AND DETACHED

Sections:

- 17.17.010 Purpose.
- 17.17.020 Overall performance standards.
- 17.17.030 Application review time frame.
- 17.17.040 Additional review procedures.

#### **17.17.010 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. The City shall make every reasonable effort, consistent with any applicable provisions of state or federal law, and the preservation of the City's health, safety and aesthetic environment, to comply with the Federal presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities to the fullest extent possible. ~~Congress and the Federal Communications Commission ("FCC") have, pursuant to the authority granted by 47 USC Section 253(e) 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.~~

#### **17.17.020 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 5.45 or eligible facilities requests shall meet the following performance standards:

1. Light Industrial (LI) Zoning. Detached WCFs located within four hundred feet of the Mukilteo Speedway/SR525 in the light industrial (LI) district shall require a conditional use permit.
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 collocated 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. Due to the proximity of Paine Field Airport to the city, all WCFs shall be approved by the Federal Aviation Administration (FAA) and the Snohomish County Airport at Paine Field to ensure that the facilities are not located within the airport's restricted airspace.

5. Landscaping. Equipment shelters and cabinets and other on-the-ground ancillary equipment shall be screened using Type I and ten feet of Type III landscaping around the enclosure in accordance with the requirements contained in Chapter 17.58, Landscaping, of the Mukilteo Municipal Code. Support structures shall be landscaped using Type I screening around the 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), the Federal Communication Commission (FCC), and/or the Snohomish County Airport at Paine Field, 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 Chapter 8.18, 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 the performance standards listed in Section 17.64.020, 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.

#### **17.17.030 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 Facility Reviews.** All wireless communications facilities authorizations and permits are subject to the federal review timelines ("shot clocks") as described in 47 C.F.R. §1.6001, et seq. 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. (Ord. 1403 § 6 (Exh. C) (part), 2017)~~

**17.17.040 Additional review procedures.**

Wireless communication facilities in design zones, shoreline management environments, undergrounded areas or critical areas are subject to review as provided in this chapter; Chapter 17.25A, Design Standards for the DB District; Chapter 17.25B, Mixed-Use Design Standards for the WMU District; Chapter 17.52, Critical Areas Regulations; Chapter 17.52A, Geologic Sensitive Area Regulations; Chapter 17.52B, Wetland Regulations; Chapter 17.52C, Fish and Wildlife Habitat Conservation Areas (Outside Shoreline Jurisdiction); and Chapter 17.52E, Shoreline Regulations. See also Chapter 17.84 regarding SEPA. (Ord. 1403 § 6 (Exh. C) (part), 2017)