

**AGENDA BILL**

<b>Subject:</b> CELL TOWER REGULATIONS – CODE AMENDMENTS	
<b>Category:</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Public Hearing <input type="checkbox"/> City Council Business <input type="checkbox"/> Resolution <input type="checkbox"/> Other – Discussion
<b>Prepared By:</b>	Emily Miner, Assistant City Attorney

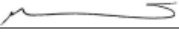
**Summary:**

The Federal Communications Commission (FCC) recently handed down a Declaratory Ruling regarding local municipalities authority to regulate the deployment of small wireless facilities. This Ruling will go into effect on January 14, 2019.

The Ruling was challenged in court by local governments but the request for a stay was denied, so to ensure the City complies with the new FCC regulations, we have drafted two separate ordinances. One updates MMC Title 19 to create regulations for processing applications for small wireless facilities and one updates MMC Title 20 to outline zoning and aesthetic requirements for small wireless facilities.

**Attachments:**

1. Ordinance No. 967
2. Ordinance No. 968

<b>Budget/Fiscal Impact:</b>	
<b>Staff Recommendation:</b>	Approval
<b>City Manager Approval:</b>	
<b>Proposed Council Motion:</b>	I move to approve Ordinance No. 967 Wireless Franchise Updates as presented and declaring an emergency.  I move to approve Ordinance No. 968 Wireless Zoning Update as presented and declaring an emergency.

**ATTACHMENT 1**

**Ordinance No. 967**

**MEDINA CITY COUNCIL**

**AN ORDINANCE OF THE CITY OF MEDINA, WASHINGTON, AMENDING TITLE 19 OF THE MEDINA MUNICIPAL CODE TO ADD A NEW CHAPTER 19.14 TITLED SMALL WIRELESS DEPLOYMENTS WHICH WILL GOVERN THE DEPLOYMENT OF SMALL WIRELESS FACILITIES; AMENDING MMC SECTION 19.02.020 TO REVISE DEFINITIONS PERTAINING TO SMALL WIRELESS FACILITIES; AMENDING MMC SECTION 19.02 TO ADD NEW SECTION 19.02.140 AUTHORIZING ISSUANCE OF SMALL WIRELESS FACILITY PERMITS; ADOPTING FINDINGS IN SUPPORT OF THE FOREGOING; DECLARING A PUBLIC EMERGENCY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE**

**WHEREAS**, the Federal Communications Commission (FCC) recently adopted a Declaratory Ruling, Order and Regulation (Ruling), and which Ruling imposes limitations on the processing and review of all permits associated with the deployment of small wireless facilities, including setting presumptive safe harbor review periods for the consideration of such facilities; and

**WHEREAS**, such regulations effectively require the City of Medina (City) to have small wireless standards and procedures in place on or before January 14, 2019; and

**WHEREAS**, poles within the public rights-of-way have been identified by the FCC as a primary resource for the deployment of small wireless facilities which are intended to increase the density and accessibility of radio frequency signals employed by smart phones and other wireless devices; and

**WHEREAS**, the City Council deems it to be in the public interest to revise, update, and add to its franchising requirements to deal specifically with small wireless facilities to be located in the City's rights-of-way, and to do so in conjunction with revisions and additions to the zoning code;

**WHEREAS**, contemporaneously with the consideration of this ordinance, the City Council enacted amendments to MMC Title 20 by amending MMC chapter 20.37 and adopting a new MMC chapter 20.38 authorizing and establishing aesthetic standards for the deployment of small wireless facilities;

**WHEREAS**, the City Council finds that the existence of the FCC regulations requires the enactment of administrative procedures and processes to comply with the new presumptive federal safe harbors on or before January 14, 2019; and

**WHEREAS**, the City is authorized by RCW 35A.12.130 to expeditiously adopt ordinances due to a public emergency for the protection of the public peace, safety, or health; and

## ATTACHMENT 1

**WHEREAS**, the potential conflict between existing City review timelines and the presumptive safe harbor review times under the new FCC regulations creates an emergency; and

**WHEREAS**, the City Council finds that adopting the franchising and application regulations set forth here are necessary for the immediate preservation of the public peace, health or safety;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1. Purpose.** The purpose of this ordinance is to adopt and establish revisions to the City's Telecommunications Code in response to the FCC Ruling restricting the City's ability to regulate the deployment of small wireless facilities.

**Section 2. Findings.** The City Council adopts its findings above and further finds that this ordinance is necessary, in conjunction with Ordinance No. \_\_, to address potential applications for small wireless facilities within the presumptive safe harbor review periods prescribed by the FCC Ruling. As such, a public emergency exists requiring that this ordinance take effect immediately upon passage.

**Section 3. Amendment to MMC 19.02.020.** The Medina Municipal Code Section 19.02.020 is hereby amended as follows:

The following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" means a person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person;

"Applicant" means any person or entity that applies for any authorization, franchise, lease, or permit pursuant to this title;

"Cable Act" means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992;

"Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers;

"Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the city as that term is defined in the Cable Act;

"Cable service," for the purpose of this title, shall have the same meaning provided by the Cable Act;

"Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to subscribers;

"City" means the city of Medina, Washington;

## ATTACHMENT 1

“City property” means and includes all real property owned by the city, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the city, which are not subject to right-of-way licensing and franchising;

“Council” means the city council of the city of Medina, Washington acting in its official capacity;

“Data communication” means:

1. The transmission of encoded information, or
2. The transmission of data from one point to another;

“Director” means the Public Works Director or his/her designee;

“Emergency” means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars;

“Excess capacity” means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities;

“FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level;

“Fiber optics” means the technology of guiding and projecting light for use as a communications medium;

“Franchise” shall mean the initial authorization, or renewal thereof, approved by an ordinance of the city, which authorizes the franchisee to construct, install, operate, or maintain telecommunications facilities in, under, over, or across rights-of-way of the city and to also provide telecommunications service to persons or areas in the city;

“Franchisee” means the person, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this title and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in this title;

“Grantee” means the person, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this Chapter and the lawful successor, transferee or assignee of such person, firm or corporation;

“Grantor” means the City of Medina acting through its City Council;

“Light Pole” means a pole owned by the City and used primarily for light streets, parking areas, parks or pedestrian paths;

“Open video system” or “OVS” refers to a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, which is provided to multiple subscribers within a community, and which the Federal

## ATTACHMENT 1

Communications Commission or its successors has certified as compliant with Part 76 of its rules, 47 C.F.R., Part 76, as amended from time-to-time;

“Operator” means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this title;

“Overhead facilities” means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities;

“Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers;

“Property of franchisee” means all property owned, installed or used by a franchisee in the conduct of its business in the city under the authority of a franchise granted pursuant to this title;

“Proposal” means the response, by an individual or organization, to a request by the city regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the city;

“Right-of-way” means land acquired or dedicated for public roads and streets, but does not include state highways or land dedicated for roads, streets and highways not opened and not improved for motor vehicle use by the public;

“Service provider”: Is defined consistently 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;

“Small wireless” and “small wireless facility” shall have the same meaning as a “small wireless facility” as set forth in 47 CFR 1.6002;

“State” means the state of Washington;

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

“Surplus space” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the federal or state orders and regulations, to allow its use by a telecommunications carrier for a pole attachment;

“Telecommunications carrier” means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of offering telecommunications service;

“Telecommunications facilities” means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireline or wireless telecommunications services;

## ATTACHMENT 1

“Telecommunications provider” means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities;

“Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium;

“Telecommunications system” see “telecommunications facilities”;

“Traffic Signal Poles” means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers;

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

“Universal service” means a level of and definition of telecommunications services as the term is defined by the FCC through its authority granted pursuant to Section 254 of the Act;

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

“Utility facilities” means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the rights-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services-;

“Utility Pole” means a wooden pole designated and used primarily for the support of electrical wires, telephone wires or television cable;

“Washington Utilities and Transportation Commission” or “WUTC” means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services, and providers in the state of Washington to the extent prescribed by law;

“Wireline” means services provided using a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

**Section 4.** Amendment to MMC 19.02 – Adoption of New Section 19.02.140. Chapter 19.02 of the Medina Municipal Code is hereby amended by the addition of a new section 19.02.140 Small Wireless Facility Permit Required to provide in its entirety as follows:

19.02.140 Small Wireless Facility Permit Required.

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate a small wireless facility, as defined in chapter 19.02.020, in, under, over or across any public way of the city or on any public structure for the purposes of providing

**ATTACHMENT 1**

telecommunication services to persons and areas in or outside the city shall first obtain a small cell permit pursuant to Chapter 19.14 MMC and 20.38. MMC.

**Section 5.** Amendment of Title 19 – Adoption of New Chapter 19.14. Title 19 of the Medina Municipal Code is hereby amended by the addition of a new chapter 19.14 Small Wireless Deployment and is hereby enacted as follows:

**Chapter 19.14  
Small Wireless Deployment**

**Sections:**

- 19.14.010 Application Process.
- 19.14.020 Small wireless permit application.
- 19.14.030 Review process.
- 19.14.040 Permit requirements
- 19.14.050 Modifications to small wireless facilities.
- 19.14.060 Consolidated Permit.

**19.14.010 Application Process.**

Overview. In order to manage its rights-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City, the City of Medina has adopted this administrative process for the deployment of small wireless facilities. The City and applicant for a franchise and other permits associated with the deployment of small wireless facilities face challenges in coordinating applicable legislative and administrative processes under the Federal Communications Commission (FCC) regulations. A franchise for the use of the City's right-of-way is a contract which requires approval by the City Council. The small wireless permits are issued by the Director. Applicants are encouraged and expected to provide all related applications in one submittal, unless they have already obtained a franchise.

Application Process. The Director is authorized to establish franchise and other application forms to gather the information required by these ordinances from applicants and to determine the completeness of the application process as provided herein. The application shall include Parts A, B, and C as described below.

Franchise. The process typically begins with and depends upon approval of a franchise for the use of the public right-of-way to deploy small wireless facilities if any portion of the applicant's facilities are to be located in the right-of-way. A complete application for a franchise is designated as Part A. An applicant with a franchise for the deployment of small wireless facilities in the City may proceed to directly apply for a small wireless facility permit and related approvals (Parts B and C).

Small Wireless Facility Permits. Part B of the application requires specification of the small wireless facility components and locations as further required in the small wireless permit application described in Section 19.14.020.

Associated Permit(s). Part C of the application shall attach all associated permits requirements including but not limited to permits required under MMC 19.12, and

## ATTACHMENT 1

applications or check lists required under the Critical Areas, Shoreline or SEPA ordinances. Applicants for deployment of small wireless facilities in City Design Zones or for new poles shall also comply with the requirements in Chapter 20.38.070.

Leases. An applicant who desires to attach a small wireless facility to any utility pole or light pole owned by the City shall include an application for a lease as a component of its application. The Director is authorized to approve leases in the form approved for general use by the City Council for any utility pole or light pole in the right-of-way. Leases for the use of other public property, structures or facilities shall be submitted to the City Council for approval.

### **19.14.020 Small Wireless Permit Application.**

The following information shall be provided by all applicants for a small wireless permit:

A. The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:

The location of overhead and underground public utility, telecommunication, cable, water, sewer drainage and other lines and equipment in the rights-of-way along the proposed route;

The specific trees, structures, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.

All existing proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 250 feet from the proposed site.

The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholes, junctions, meters, disconnect switches, emergency backup cabinets, and any other ancillary equipment or construction necessary to construct the small wireless facility.

If the site location includes a replacement light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk 150 feet upstream and downstream of the existing light.

Compliance with the aesthetic requirements of Chapter 20.38.060.



## ATTACHMENT 1

The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. To extent that the pole or structure is not owned by the property owner, the applicant shall demonstrate in writing that they have authority from the property owner to install the small wireless facility on the pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards, as well as assurances that the specific pole can withstand wind and seismic loads, from the pole owner, unless the pole owner is the City. Submission of the lease agreement between the owner and the applicant is not required. For city-owned poles or structures, the applicant must obtain a lease from the City prior to or concurrent with the small wireless permit application and must submit as part of the application the information required in the lease for the City to evaluate the usage of a specific pole.

The applicant can batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.

Any application for a small wireless facility located in the right-of-way adjacent to a parcel zoned for residential use shall demonstrate that it has considered the following:

Whether the proposed small wireless facility could be located on a street corner rather than in the middle of a block.

Whether a small wireless facility is currently installed on an existing pole in front of the same residential parcel. If a small wireless facility exists, then the applicant must demonstrate that no technically feasible alternative location exists which is not in front of the same residential parcel.

Whether the proposed small wireless facility can be screened from residential view by choosing a pole location that is not directly in front of a window or views.

Any application for a small wireless permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 18.04. Further, any application proposing small wireless facilities in Shoreline Management Zones (pursuant to MMC 20.6) or in Critical Areas (pursuant to MMC 20.50) must indicate that the application is exempt or comply with the review processes in such codes.

The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facilities 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 Wireless facility will operate. If facilities which generate RF radiation necessary to the Small Wireless facility are to be provided by a third party, then the small wireless permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.

The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

## ATTACHMENT 1

A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that both construction plans and final construction of the small wireless facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads as established by the International Building Code.

A traffic control plan as required by MMC 19.12.

The applicant shall endeavor to use the quietest equipment possible and shall state the noise levels of all equipment utilized.

Pursuant to MMC 19.14.040(F), applicants shall include documentation that demonstrates that there is a licensed provider of wireless services contractually committed to using the proposed small wireless facility at the requested location.

Recognizing that small wireless facility technology is rapidly evolving, the Director is authorized to adopt and publish standards for the technological and structural safety of City-owned structures and to formulate and publish application questions for use when an applicant seeks to attach to City-owned structures.

### **19.14.030 Review Process.**

A. Review. The following provisions relate to review of applications for a small wireless facility permit.

In any zone, upon application for a small wireless permit, the City will permit small wireless deployment on existing or replacement utility poles conforming to the City's generally applicable development and design standard adopted pursuant to Chapter 20.38.060 except as provided in subsection B below.

Vertical clearance shall be reviewed by the Director to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-ways.

Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, traffic warrants, city ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement pole or new pole must: be physically possible, cannot obstruct vehicular or pedestrian traffic or the clear zone, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

No equipment shall be operated so as to produce noise in violation of Chapter 8.06 MMC.

Small wireless facilities may not encroach onto or over private property or property outside of the right of way without the property owner's express written consent.

Development Services Department. Small wireless facilities on existing infrastructure shall be reviewed and approved by the Director. Small wireless facilities deployment in areas designated as Design Zones pursuant to Chapter 20.38.050, as well as new non-City owned poles, or

## ATTACHMENT 1

replacement poles deviating from the pole design standards adopted pursuant to Chapter 20.38.060, are subject to review by the Hearing Examiner.

**Eligible Facilities Requests.** The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded upon an Eligible Facilities Request described in Chapter 20.38.080 when the modification does not defeat the concealment elements of the small wireless facility.

**Review of Facilities.** Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 47 USC 332 and other applicable statutes, regulations and case law. Applicants for franchises and the small wireless facility permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers, utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this Chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

**Collaborative Review.** The Director may require the applicant to produce a representative to collaboratively review application materials with City staff up to one time per week during the course of the City's review. The required applicant representative may include an engineer and/or a siting specialist with sufficient understanding of the project to knowledgeably address questions or concerns the City may have on the application. The City must provide seven (7) days' notice to applicant of the date, time, location, anticipated scope of review, and requested participants for the meeting.

**Final Decision.** Consistent with this Chapter as well as other applicable code provisions including but not limited to MMC 20.38.060, the Director or his/her designee shall review an application to site small wireless facilities, with the exception of new poles in the rights-of-way which is governed by MMC 20.38.070, for completeness and notify the Applicant consistent with the requirements of federal and state law.

**Public Comment.** The City shall provide notice of a complete application for a small wireless facility permit on the City's website with a link to the application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant shall notice and hold at least one (1) informational meeting for the public within 30 days of filing the complete application. These informational meetings are for the public's information and are neither hearings nor part of any land use appeal process.

**Withdrawal.** Any applicant may withdraw an application submitted pursuant to 19.14.020 at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or their successors in interest. When a withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs prior to the Director's decision, then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of City costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Director's decision, there shall be no refund of all or any portion of such fee.

**Supplemental Information.** Failure of an applicant to provide additional information as requested pursuant to 19.14.020 by the Director within sixty (60) days of notice by the Director

## ATTACHMENT 1

shall be deemed a denial of that application, unless an extension period has been approved by the Director.

### **19.14.040 Permit Requirements**

A. The grantee of any permit shall comply with all of the requirements within the small wireless permit.

Small wireless facilities installed pursuant to a small wireless facility permit may proceed to install the approved small wireless facilities without the need for an additional right-of-way use permit if construction is commenced within thirty (30) days of approval by providing email or written notice to the Director. Facilities approved in a small wireless permit in which installation has not commenced within thirty (30) days of the approval of a small wireless facility permit shall apply for and be issued a right-of-way use permit to install such small wireless facilities in accordance with the standard requirements of the City for use of the right-of-way.

Post-Construction As-Builts. Within sixty (60) days after construction of the small wireless facility, the grantee shall provide the City with as-builts of the small wireless facilities demonstrating compliance with the permit and site photographs.

Permit Time Limit. Construction of the small wireless facility must be completed within six (6) months after the approval date by the City. The grantee may request one (1) extension to be limited to three (3) months, if the applicant cannot construct the small wireless facility within the original six (6) month period.

Site Safety and Maintenance. The grantee must maintain the small wireless facilities in safe and working condition. The grantee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

Operational Activity. The grantee shall include documentation that demonstrates that there is a licensed provider of wireless services contractually committed to using the proposed small wireless facility at the requested location.

### **19.14.050 Modifications to small wireless facilities**

A. If a grantee desires to make a modification to an existing small wireless facility, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a small wireless facility permit.

A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility within the rights-of-way, or the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small wireless facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a small wireless facility permit shall not be required for replacing equipment within the equipment

**ATTACHMENT 1**

enclosure or reconfiguration of fiber or power to the small wireless facility. Right-of-way use permits may be required for such routine maintenance, repair or replacement consistent with 19.04 MC.

**19.14.060 Consolidated Permit**

A. The issuance of a small wireless permit grants authority to construct small wireless facilities in the rights-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both the public works and the development services department. If the applicant requires a new franchise to utilize the right-of-way, the franchise approval shall be consolidated with the small wireless facility permit review if requested by the applicant. As an exercise of police powers pursuant to RCW 35.99.040(2), the small wireless facility permit is not a right-of-way use permit, but instead a consolidated public works and land use permit and the issuance of a small wireless facility permit shall be governed by the time limits established by federal law for small wireless facilities.

To the extent they do not conflict with the requirements of this chapter, the general standards applicable to the use of the rights-of-way described in 19.04 and 19.06 MMC shall apply to all small wireless facility permits.

**Section 6. Severability.** If any section, sentence, clause, or phrase of this ordinance shall be 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 7. Corrections.** The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical 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 8. Effective Date.** Based upon the findings set forth above, the City Council hereby declares a public emergency requiring this ordinance to take effect immediately. This ordinance shall accordingly be in full force and effect immediately upon passage  
PASSED by the majority plus one of the City Council of the City of Medina this 14<sup>th</sup> day of January 2019 and signed in authentication of its passage this 14<sup>th</sup> day of January 2019.

\_\_\_\_\_  
Cynthia Adkins, Mayor

Approved as to form:

Attest:

\_\_\_\_\_  
Scott Missall, City Attorney

\_\_\_\_\_  
Aimee Kellerman, City Clerk

**ATTACHMENT 2**

**Ordinance No. 968**

**MEDINA CITY COUNCIL**

**AN ORDINANCE OF THE CITY OF MEDINA, WASHINGTON, ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; AMENDING TITLE 20 OF THE MEDINA MUNICIPAL CODE TO ADD A NEW CHAPTER 20.38 AUTHORIZING AND ESTABLISHING STANDARDS FOR THE DEPLOYMENT OF SMALL WIRELESS FACILITIES; ADOPTING FINDINGS IN SUPPORT OF THE FOREGOING; REQUIRING A POST-ADOPTION PUBLIC HEARING ON THE FOREGOING; PROVIDING FOR SEVERABILITY; DECLARING A PUBLIC EMERGENCY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE**

**WHEREAS**, the Federal Communications Commission (FCC) recently adopted a Declaratory Ruling, Order and Regulation (Ruling), and which Ruling imposes limitations on the processing and review of all permits associated with the deployment of small wireless facilities, including setting presumptive safe harbor review periods for the consideration of such facilities; and

**WHEREAS**, such regulations effectively require the City of Medina (City) to have small wireless standards and procedures in place on or before January 14, 2019; and

**WHEREAS**, such interim standards will protect the City and meet FCC requirements while regaining the ability to adopt additional aesthetic standards on or before January 14, 2019 with the ability to adopt additional aesthetic standards on or before April 14, 2019; and

**WHEREAS**, contemporaneous with the consideration of this ordinance, the City Council enacted amendments to its existing franchise code provisions MMC Chapter 19.02 and adopted a new MMC Chapter 19.14 in order to provide for the deployment of small wireless facilities; and

**WHEREAS**, the aesthetic design and concealment standards that govern deployment of small wireless facilities on private property, as well as within the public right-of-way, will be included in MMC Chapter 20.38;

**WHEREAS**, separately, federal law and regulation sets time limits on the processing of applications for eligible facility requests to expand existing structures which do not substantially change the height or profile of the structures used to collocate wireless communications facilities, and which regulations will also become part of Chapter 20.38; and

**WHEREAS**, the FCC Ruling allows the City to adopt aesthetic standards for such deployments that will require utilization of a consolidated process emphasizing administrative review in order to comply with federal safe harbors or presumptively reasonable time limits for review; and

**WHEREAS**, the City Council finds that the existence of the FCC regulations requires the enactment of administrative procedures and processes to comply with the new presumptive federal safe harbors on or before January 14, 2019; and

## ATTACHMENT 2

**WHEREAS**, the potential conflict between existing City review timelines and the presumptive safe harbor review times under the new FCC regulations creates a time sensitive emergency; and

**WHEREAS**, the City is authorized by state law, including RCW 36.70A.390 and RCW 35A.63.220, to expeditiously adopt interim zoning ordinances due to a public emergency for the protection of the public peace, safety, or health while permanent regulations are developed, vetted and processed through the City's standard legislative procedure's; and

**WHEREAS**, the City Council finds that the use of the interim zoning ordinance will allow the City to meet the January 14, 2019 deadline while providing a meaningful opportunity for its citizens to provide input regarding design, concealment and other aesthetic standards within the longer timeframe permitted by use of an interim zoning ordinance; and

**WHEREAS**, the City Council finds that adopting interim zoning regulations as set forth herein for up to six (6) months is necessary for the immediate preservation of the public peace, health or safety;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1. Purpose.** The purpose of this ordinance is to adopt and establish interim aesthetic requirements and revisions to the City's wireless communications facilities code provisions in response to the FCC Ruling for a period of six (6) months, or until such earlier time as permanent regulations may be adopted.

**Section 2. Findings.** The City Council adopts its findings above and further finds that this ordinance is necessary, in conjunction with Ordinance No. 967, to address potential applications for small wireless facilities within the presumptive safe harbor review periods prescribed by the FCC Ruling. As such, a public emergency exists requiring that this ordinance take effect immediately upon passage.

**Section 3. Amendment to MMC 20.37.030(A).** The Medina Municipal Code Section 20.37.030(A) regarding applicability of Chapter 20.37, Wireless Communication Facilities is hereby amended as follows:

A. The provisions of this chapter shall apply to all new and expansion and/or alteration of wireless communication facilities located within the boundaries of the city, except for the following:

1. Those facilities used for the primary purpose of public safety by a public agency, such as police, and 911 communications systems;
2. Incidental use of a support structure exempts under subsection (A)(1) of this section by nonpublic entities for the attachment of antennas and ancillary facilities;
3. Wireless radio utilized for emergency communications in the event of a disaster;
4. An antenna that is designed to receive television broadcast signals;
5. An antenna for receiving and sending of amateur radio devices or HAM radios

**ATTACHMENT 2**

- provided the criteria in MMC 20.37.040 are satisfied;
- 6. An antenna that is one meter or less in diameter or diagonal measurement, which is designed to receive direct broadcast satellite services, including direct-to-home satellite services and those subject to MMC 20.32.060;
- 7. An antenna that is one meter or less in diameter or diagonal measurement, which is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services;
- 8. A small wireless communications facility that is permitted under MMC 19.14.020 and is subject to MMC 20.38.

**SECTION 4.** Amendment of Title 20 MMC – Adoption of New Chapter 20.38. Title 20 of the Medina Municipal Code is hereby amended by the addition of a new chapter 20.38 Small Wireless Facilities and is hereby enacted as follows:

**Chapter 20.38  
SMALL WIRELESS FACILITIES**

**Sections:**

- 20.38.010 Purpose.
- 20.38.020 Definitions.
- 20.38.030 General provisions.
- 20.38.040 Application requirements for small wireless facilities.
- 20.38.050 Design Zones for small wireless facilities.
- 20.38.060 Design and concealment standards for small wireless deployments.
- 20.38.070 New poles in the rights-of-way for small wireless facilities and installations in a Design Zone.
- 20.38.080 Eligible facilities request.
- 20.38.090 Testing of small wireless facilities required.
- 20.38.100 Appeals.

**20.38.010 Purpose.**

The purpose of this chapter is to set forth the regulations for the placement, development, permitting, and removal of small wireless facilities. Among the purposes included are to:

Minimize potential adverse visual, aesthetic, and safety impacts of small wireless facilities.

Establish objective standards for the placement of small wireless facilities.

Ensure that such standards allow competition and do not unreasonably discriminate among providers of functionally equivalent services.

Encourage the design of such small wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.

Encourage the collocation or attachment of small wireless facilities on existing support structures to help minimize the total number and impact of such structures throughout the community.



## ATTACHMENT 2

F. Protect the public health, safety and welfare.

### **20.38.020 Definitions.**

See Chapter 19.02.020 MMC for additional definitions for terms utilized in this Chapter.

A. "Antenna" means 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, utility pole, building or other structure for the purpose of providing wireless services.

"Co-location" 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.

"Small wireless facility" has the same meaning as defined in 47 CFR 1.6002.

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

"Transmission equipment" means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services included, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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

"Utility pole" means a wooden 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.

### **20.38.030 General provisions.**

A. Small wireless facilities shall not be considered nor regulated as essential public facilities.

Small wireless facilities located outside of the public rights-of-way may be either a primary or a secondary use. A different use of an existing structure on the same lot shall not preclude the installation of a small wireless facility.

Small wireless facilities located within the public right-of-way pursuant to a valid franchise are permitted uses in every zone of the City but still require a small wireless facility permit pursuant to MMC 19.02.140.

## ATTACHMENT 2

### **20.38.040 Application requirements for small wireless facilities.**

Any application for a small wireless facility both inside and outside of the right-of-way shall comply with the application requirements for a small wireless facility permit described in Chapter 19.14.020.

### **20.38.050 Design Zones for small wireless facilities**

A. The following zones are designated as Design Zones for the purpose of siting small wireless facilities: Medina Park located at 7789 NW 12<sup>th</sup> Street, Medina Beach Park located at 501 Evergreen Point Road, and Fairweather Nature Preserve (also referred to as Fairweather Nature Preserve and Park) located at 2857 Evergreen Point Road, Viewpoint Park located at Overlake Drive West and 84<sup>th</sup> Avenue NE, and Lake Lane Park located in the 3300 block of 78<sup>th</sup> Place NE.

Any applicant who desires to place a small wireless facility in a Design Zone must first establish that the applicant cannot locate the small wireless facility outside of the Design Zone. Applications for small wireless facilities in a Design Zone may be approved if the applicant demonstrates that due to technical infeasibility the applicant cannot locate the proposed small wireless facility on an existing or replacement pole within 500 feet of the proposed site and outside of the Design Zone.

Applications for small wireless facilities within Design Zones are subject to approval by the Hearing Examiner and must comply with a concealment element design described in Chapter 20.38.070 below.

### **20.38.060 Design and concealment standards for small wireless deployments.**

Small wireless facility deployments whether permitted in the right-of way under Chapter 19.14 MMC or permitted in accordance with this chapter shall conform to the following design standards:

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

Enclosure Location and Dimensions. The applicant shall minimize to the extent possible the antenna and equipment space use the smallest amount of enclosure possible to fit the necessary equipment. The antennas and equipment shall be located using the following methods in priority order:

Concealed completely within the pole or pole base. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design. If within the pole base, the base shall meet the ADA requirements and not impact the pedestrian access route.

Located on a pole. If located on a pole, antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush

## ATTACHMENT 2

mounted to the pole, meaning no more than six (6) inches off of the pole, and the equipment enclosure and all other wireless equipment associated with the shall be the minimum size necessary for the intended purpose. The equipment enclosure and all other wireless equipment associated with the pole (including interior conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs. The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.

Underground in a utility vault. If located underground, the access lid to the equipment enclosure shall be located outside the footprint of any pedestrian curb ramp and shall have a nonskid surface meeting ADA requirement if located within an existing pedestrian access route.

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 small wireless facility permit issuance.

An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.

Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary; provided that the height of the replacement pole cannot be extended further by additional antenna height.

The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25% increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection E(4) below.

The use of the pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

## ATTACHMENT 2

All equipment that can be located underground shall be located underground if technically feasible.

Wooden pole design standards. Small wireless facilities located on wooden poles shall conform to the following design criteria:

The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.

A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A "pole extender" as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.

Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.

Antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.

Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume.

A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection B(1) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.

## ATTACHMENT 2

The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.

An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (E)(1). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs, provided that such location does not interfere with the operation of the banners or signs.

The visual effect of the small wireless facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.

The use of the wooden pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing utility pole measured at the base of the pole.

## ATTACHMENT 2

All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small wireless.

Small wireless facilities attached to existing buildings, shall conform to the following design criteria:

Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.

The interruption of architectural lines or horizontal or vertical reveals is discouraged.

New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.

Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.

Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.

Small wireless facilities shall be painted and textured to match the adjacent building surfaces.

Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.

Each strand mounted facility shall not exceed three (3) cubic feet in volume;

Only one strand mounted facility is permitted per cable between any two existing poles;

The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance technically necessary or is required by the pole owner for safety clearance;

No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;

Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and

Pole mounted equipment shall comply with the requirements of subsections A and B above.

Such strand mounted devices must be installed to cause the least visual impact, be outside the view of a single family residence, and without excess exterior cabling or wires (other than the original strand).

## ATTACHMENT 2

Strand mounted facilities are prohibited on non-wooden poles.

### General requirements.

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.

No equipment shall be operated so as to produce noise in violation of Chapter 8.06 MMC.

Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC §§ 253 and 332.

Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.

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

No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches); provided that, signs are permitted as concealment element techniques where appropriate.

Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan. As feasible, lighting must be shielded to prevent direct glare and should not be directed towards nearby properties.

Side arm mounts for antennas or equipment must be the minimum extension necessary and for wooden poles may be no more than twelve (12) inches off the pole and for non-wooden poles no more than six (6) inches off the pole.

The preferred location of a small wireless facility on a pole is the location with the least visible impact.

Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached.

## ATTACHMENT 2

Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use in the residential zones.

The City may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way in when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.

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

### **20.38.070 New poles in the rights-of-way for small wireless facilities or installations in Design Zone.**

A. New poles within the rights-of-way are only permitted if the applicant can establish that:

The proposed small wireless facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights of way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;

The proposed small wireless facility receives approval for a concealment element design, as described in MMC 20.38.070(C) below;

The proposed small wireless facility also complies with Shoreline Management Act, and SEPA, if applicable; and

Any new pole shall be installed at the point closest to the side property line so as to not impact the property's view; and

No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance (Title 20.50MC), except when determined to be exempt pursuant to said ordinance.

All equipment that can be located underground shall be located underground if technically feasible.

An application for a new pole is subject to a review and decision by the Hearing Examiner.

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



## ATTACHMENT 2

The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including similar height to the extent technically feasible. If the proposed small wireless facility is placed on a replacement pole in a Design Zone, then the replacement pole shall be of the same general design as the pole it is replacing, unless the development services department otherwise approves a variation due to aesthetic or safety concerns. Any concealment element design for a small wireless facility on a decorative pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the decorative pole. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color, and texture - or the appearance thereof - as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to MMC 20.38.060.

If the Director has already approved a concealment element design either for the applicant or another small wireless facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.

Even if an alternative location is established pursuant to 20.38.070(A)(1) the Director may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.

Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed small wireless facility is more than sixty (60) feet.

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

### **20.38.080 Eligible Facilities Request**

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this Section 20.38.080.

“Base Station”: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications

## ATTACHMENT 2

network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:

Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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 wireless networks).

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 subparagraph (i) and (ii) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the Eligible Facilities Request application is filed with the City, does not support or house equipment described in subparagraph (1)(a) and (1)(b) above.

"Collocation": 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": 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:

Collocation of new transmission equipment;

Removal of transmission equipment; or

Replacement of transmission equipment.

"Eligible support structure": 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.

"Existing": A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

"Substantial Change": A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

For towers other than towers in the public rights-of-way, it increases the height of

## ATTACHMENT 2

the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten (10) feet, whichever is greater;

For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

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

It entails any excavation or deployment outside the current site;

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

It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

“Tower”: 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”. 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.

Application. The Director shall prepare and make publicly available an application form used 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.

Qualification as an Eligible Facilities Request. Upon receipt of an application for an Eligible Facilities Request, the Director shall review such application to determine whether the

## ATTACHMENT 2

application qualifies as an Eligible Facilities Request.

**Timeframe for Review.** Within sixty (60) days of the date on which an applicant submits an Eligible Facilities Request application, the Director shall approve the application unless it determines that the application is not covered by this Section 20.38.080.

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

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

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

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

**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.

**Failure to Act.** In the event the Director fails to approve or deny a request for an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

### **20.38.090 Testing of small wireless facilities required.**

Each permitted small wireless facility permit holder shall conduct annual tests, at the permit holder's expense, necessary to establish the level of radio frequency radiation created by the small wireless facility. The purpose of this testing is to ensure that the radio frequency radiation is in compliance with the FCC's regulations and standards.

## ATTACHMENT 2

A. The annual testing is in addition to the test required pursuant to MMC 19.14.020(F). Thereafter, the permit holder shall test the small wireless facility every April to measure the radio frequency radiation created by the small wireless communication facilities to ensure compliance with the FCC's regulations and standards.

All such tests required by this section shall be performed by a licensed electrical engineer, or by a person with equivalent capabilities approved by the City Engineer.

Copies of each and every radio frequency radiation test shall be submitted to the City Engineer on the first day of the month following the month in which the test is performed. Such test results shall be certified by a licensed electrical engineer. No renewal of a permit or lease shall be granted unless the permit holder submits the test results to the City prior to the City's consideration of the renewal application.

If at any time the radio frequency radiation test shows that the radio frequency radiation emanating from the small wireless facility exceeds the standards established by the FCC, the permit holder shall immediately disconnect the small wireless facility and notify the City Engineer. The small wireless facility shall not be reconnected until the permit holder demonstrates that corrections have been completed to reduce the radio frequency radiation to levels permitted by the FCC.

### **20.38.100 Appeals**

Small wireless facilities permit decisions or Eligible Facilities Requests decisions made by the Director are final decisions appealable to the Hearing Examiner within thirty (30) days of such decision. However, decisions on request for new poles for the siting of small wireless facilities as outlined in MMC 20.38.070 or for installations in Design Zones as outlined in MMC 20.38.050, are determined by the Hearing Examiner. Such decisions by the Hearing Examiner are final and appealable to King County Superior Court within thirty (30) days of such decision. The timely filing of an appeal of a wireless communication facility permit decision shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

**Section 5. Public Hearing.** The City Clerk is hereby authorized and directed to schedule a public hearing on the interim regulations set forth in this ordinance and to provide notice of said hearing in accordance with applicable standards and procedures. Said hearing shall be held no later than 60 days after the date of adoption hereof. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council may adopt additional legislative findings in support of this ordinance at the conclusion of said hearing.

**Section 6. Corrections.** The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 7. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

**ATTACHMENT 2**

**Section 8. Declaration of Emergency; Effective Date; Sunset.** Based upon the findings set forth above, the City Council hereby declares a public emergency requiring this ordinance to take effect immediately. This ordinance shall accordingly be in full force and effect immediately upon passage and shall remain effective for a period of six months unless terminated earlier or subsequently extended by the City Council. PROVIDED, that the City Council may, in its sole discretion, renew the interim zoning regulations set forth herein for one or more six (6) month periods in accordance with state law.

PASSED by the majority plus one of the City Council of the City of Medina this 14<sup>th</sup> day of January 2019 and signed in authentication of its passage this 14<sup>th</sup> day of January 2019.

\_\_\_\_\_  
Cynthia Adkins, Mayor

Approved as to form:

Attest:

\_\_\_\_\_  
Scott Missall, City Attorney

\_\_\_\_\_  
Aimee Kellerman, City Clerk