



# MEDINA, WASHINGTON

## AGENDA BILL

May 8, 2023

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**Subject:** Small Wireless Facility Permit Process

**Category:** Presentation and Discussion

**Staff Contact(s):** Emily Romanenko, Assistant City Attorney and Steve Wilcox, Development Services Director

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### **Summary**

This presentation is in follow up to the April 26, 2023, memorandum<sup>1</sup> which outlined the small wireless facility (“SWF”) permit process. This presentation and discussion will review the SWF permit process and address additional questions received regarding T-Mobile’s proposed SWF.

The additional questions received can be summarized as follows: (1) how T-Mobile’s proposed application intersects with the 2017 litigation regarding the T-Mobile macro facility at Fairweather Park, (2) whether this facility meets the definition of a SWF as defined by the FCC regulations, and (3) what specific aesthetic requirements apply to T-Mobile’s proposed SWF.

#### **1. 2017 Litigation**

The 2017 Litigation involved a T-Mobile macro facility, which was an approximately 80-foot cell tower originally located in the WSDOT Park and Ride. T-Mobile proposed to relocate the macro facility within Fairweather Park. This proposal triggered the need for several land use permit applications. These permit applications were reviewed under the Medina Municipal Code (“MMC”) and applicable Federal Communication Commission (“FCC”) regulations in place at time. The permit decisions were appealed by Medina residents, the case subsequently went through the administrative appeal process and eventually to Federal District Court. Documentation regarding the 2017 case can be found at this [link](#).

The current T-Mobile application is for a SWF as opposed to the macro facility at issue in 2017. Because the technology is different, different regulations apply. As noted in the April 26, 2023 memorandum, the FCC issued a [2018 Declaratory Ruling and Third Report and Order](#) (“2018 FCC Order”) on September 27, 2018 to streamline the way cities could regulate SWF and require SWF to be permitted; effectively reducing cities’ regulatory authority to reviewing SWF for objective and reasonable aesthetic standards. The 2018 FCC Order triggered the need for local municipalities to review and revise, and adopt new regulations regarding deployment of SWF. Medina undertook that review process in 2018/2019 and those regulations (located in MMC chapter [15.14](#) and MMC chapter [16.38](#)) govern T-Mobile’s proposed deployment of the SWF. Thus, because T-Mobile is deploying a different type of technology (SWF) with their current

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<sup>1</sup> This memorandum was sent to Council previously and has now been included in the May 8<sup>th</sup> Council packet materials.

proposal, which is regulated differently by federal and local law, the prior litigation is not applicable.

## **2. Definition of SWF**

SWF are defined by cross reference in MMC [15.02.020](#) to [47 CFR § 1.6002\(l\)](#). 47 CFR § 1.6002(l) states as follows:

(l) Small wireless facilities are facilities that meet each of the following conditions:

(1) The facilities -

(i) Are mounted on [structures](#) 50 feet or less in height including their [antennas](#) as defined in [§ 1.1320\(d\)](#); or

(ii) Are mounted on [structures](#) no more than 10 percent taller than other adjacent [structures](#); or

(iii) Do not extend existing [structures](#) on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each [antenna](#) associated with the [deployment](#), excluding associated [antenna](#) equipment (as defined in the definition of [antenna](#) in [§ 1.1320\(d\)](#)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the [structure](#), including the wireless equipment associated with the [antenna](#) and any pre-existing associated equipment on the [structure](#), is no more than 28 cubic feet in volume;

(4) The facilities do not require [antenna structure](#) registration under [part 17](#) of this chapter;

(5) The facilities are not located on Tribal lands, as defined under [36 CFR 800.16\(x\)](#); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in [§ 1.1307\(b\)](#).

As part of the review process for T-Mobile's application, City staff are working closely with consultants to ensure that the proposal does not exceed the height limits, nor the volumetric limits, set forth in the federal regulations. As you can see, the FCC has made the height limits extremely ambiguous as the height can be measured in one of three ways. Despite these limitations created by the FCC, City staff will review the current application in detail to ensure that it meets this definition and will not approve the application unless it does meet the definition and the aesthetic requirements in MMC chapter 16.38.

## **3. Aesthetic Requirements – MMC chapter 16.38 (Small Wireless Facilities)**

As mentioned above, after the 2018 FCC SWF Order was issued, the City undertook a comprehensive review of its wireless regulations to ensure existing regulations complied with the

FCC order and to adopt new regulations as applicable to ensure compliance with the changes in federal law. The materials related to the City's legislative process of that review are included in the Council packet.

T-Mobile's specific application is for a SWF on a wood pole owned by Puget Sound Energy ("PSE"). Accordingly, the wooden pole design and concealment standards in MMC [16.38.070\(B\)](#) apply to their facility. Additionally, the general regulations in MMC [16.38.070\(E\)](#) also apply. As mentioned above, staff are still reviewing the application to ensure compliance with these aesthetic standards are met and will not approve the application until all regulations are complied with.

#### **4. Future Considerations**

If desired, the Council could direct City staff to undertake a review of the SWF aesthetic standards and consider adopting a unified pole design standard for both wooden poles and metal poles. Since PSE owns most of the poles in the City, City staff would need to work closely with PSE and the carriers to ensure that the unified pole designs are compatible both from a structural integrity standpoint for PSE and a technology standpoint from the carriers.

Additionally, while the City is currently unable to regulate SWF or macro facilities on the basis of health or environmental considerations, the Council could consider passing a resolution asking the FCC to update studies on the potential health risks of wireless facilities. Portland, Oregon adopted such a [resolution](#) that could be used as a starting point.

#### **Attachment(s):**

Attachment 1: December 11, 2018 Planning Commission Power Point

Attachment 2: January 14, 2019 Council Packet

Attachment 3: February 25, 2019 Joint Council/Planning Commission Packet and Power Point

Attachment 4: May 13, 2019 Memorandum and Power Point

Attachment 5: July 8, 2019 Council Packet

Attachment 6: April 1, 2021 T-Mobile Pre-application materials

Attachment 7: April 26, 2023 Memorandum on Small Wireless Facility Permit Process

**Budget/Fiscal Impact:** N/A

**Recommendation:** N/A

**City Manager Approval:** N/A

**Proposed Council Motion:** N/A

**Time Estimate:** 30 minutes