

**AGENDA BILL**

<b>Subject:</b>	<b><i>Public Hearing on Wireless Communication Facilities Code Amendments</i></b>		
<b>Category:</b>	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Ordinance	<input checked="" 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:**

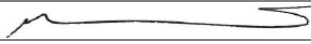
City staff have prepared draft amendments to the Medina Municipal Code regulating wireless communication facilities. The impetus for these code amendments stems from the Federal Communication Commission's Order that went into effect on January 14, 2019. The FCC Order issued new rules regarding cities' ability to regulate the deployment of small wireless facilities.

The Council adopted interim regulations on January 14, 2019 and has spent the last six months revising and refining the interim regulations. The Council has reviewed and provided feedback on the code over the course of three meetings. In addition, the Council has held two public hearings to solicit and receive input from both citizens and the industry. Staff have revised the code based on the feedback received from these meetings. Accordingly, included in the attachments here is final version of the code. Adoption of the code will conclude the official code amendment process.

Future steps beyond the code adoption include the development of internal administrative documents for additional technical standards, collaborative meetings with the other Points Communities to develop uniform design ideas, and a close watch of the litigation at the Ninth Circuit as the legal challenge of the FCC Order continues.

**Attachments:**

1. Staff Report – Wireless Communication Facilities Code Update
2. Comment letter from Washington Department of Transportation
3. Ordinance No. 974
4. Ordinance No. 975

<b>Budget/Fiscal Impact:</b>	N/A
<b>Staff Recommendation:</b>	Approval
<b>City Manager Approval:</b>	
<b>Proposed Council Motion:</b>	Approve Ordinance No. 974 and Ordinance No. 975 as presented.

**M E M O R A N D U M**

DATE: July 8, 2019  
TO: Honorable Mayor and Medina City Council  
FROM: Emily Miner, Assistant City Attorney  
RE: Wireless Communication Facilities Code Amendments

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In the fall of 2018, the Federal Communication Commission (FCC) adopted new rules regarding how cities can regulate the deployment of small wireless communication facilities in their communities. The FCC Order went into effect on January 14, 2019. In response, the City adopted interim regulations in order to comply with the new FCC Order and protect the City in the event it received an application to deploy small wireless facilities. This gave the Council six months to work through its regular legislative process to further modify and tailor the interim regulations.

Over the last six months, Council has met three times to review the revised code amendments, and has held two public hearings to solicit and receive public comment. Staff also met with citizens and industry experts to obtain feedback on the proposed code. On May 13, 2019, the Council reviewed a draft ordinance that incorporated the comments from the industry. Council requested some changes during the May 13, 2019 meeting and those have been made and are noted in red in the ordinances attached. Staff will also highlight these revisions during the staff presentation. The rest of the code is unchanged since the May 13, 2019 meeting.

In addition to receiving input from the Council, citizens, and industry experts, the code also underwent the required Growth Management Act review, including receiving approval from the Department of Commerce ("DOC"). One comment was received during the DOC review from the Washington State Department of Transportation, which has been addressed. In addition, the code underwent the required State Environmental Policy Act review. A determination of non-significance was issued, and no comments or appeals were received.

Accordingly, staff recommends approval of the code amendments as presented.

**AGENDA ITEM 6.1  
ATTACHMENT 2**

**Emily F. Miner**

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**From:** Stephanie Keyser <skeyser@medina-wa.gov>  
**Sent:** Thursday, June 13, 2019 7:37 AM  
**To:** Emily F. Miner  
**Subject:** FW: WSDOT comments on Medina small cell wireless code update, Commerce ID # 2019-S-268  
**Attachments:** Picture (Device Independent Bitmap) 1.jpg

Good Morning Emily,

Please see WSDOT's comment below!

Stephanie

-----Original Message-----

**From:** Bolotin, Leah <BolotiL@wsdot.wa.gov>  
**Sent:** Thursday, June 13, 2019 7:35 AM  
**To:** Stephanie Keyser <skeyser@medina-wa.gov>  
**Cc:** Wright, Patrick <WrightP@wsdot.wa.gov>  
**Subject:** WSDOT comments on Medina small cell wireless code update, Commerce ID #2019-S-268

Hi Stephanie,

Thank you for the opportunity to review Medina's code update. WSDOT has reviewed the proposed amendments to Medina Municipal Code Titles 19 and 20 - Wireless Code. The WSDOT Aviation Office is asking all jurisdictions to add the following text to their wireless communications code:

Any proposed communication tower or Small Wireless Facility requires analysis by the FAA to ensure that the structure does not emit incompatible frequencies that could impact air navigation or air navigation facilities. This is accomplished by submitting an FAA Form 7460-1 for analysis by the FAA. Additionally, an FAA Form 7460-1 is required for proposed construction of any facility that can impede the operations of an airport or national airspace as required by 14 CFR Part 77 <<https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=61302bd90d79271a583474ad2f9dcd7e&rgn=div5&view=text&node=14:2.0.1.2.9&idno=14>>.

Please forward questions regarding the above suggested text to WSDOT Aviation & Emergency Services Planner Patrick Wright at WrightP@wsdot.wa.gov or 360-709-8019.

Thank you,  
Leah

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Leah Bolotin, AICP  
Senior Planner  
WSDOT Management of Mobility Division  
206-440-5057  
WSDOT Planning Resources <<http://www.wsdot.wa.gov/planning/community/GMA.htm>>

Ordinance No. 974

**AN ORDINANCE OF THE CITY OF MEDINA, WASHINGTON CONCERNING APPLICATION REQUIREMENTS FOR SMALL WIRELESS FACILITIES; AMENDING MMC SECTION 19.02.020; REPEALING AND REPLACING IN FULL MMC CHAPTER 19.14; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

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**WHEREAS**, the Federal Communications Commission ("FCC") recently adopted a Declaratory Ruling and Third Report and Order 18-133 ("FCC Order") governing small wireless facilities, which imposes limitations on the processing and review of all permits associated with the deployment of small wireless facilities, including setting presumptive review periods for the consideration of such facilities; 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 FCC Order allows the City to adopt standards for the deployment of small wireless facilities that will require utilization of a consolidated process emphasizing administrative review in order to comply with federal presumptively reasonable time limits for review; and

**WHEREAS**, the City Council finds that the existence of the federal regulations requires the enactment of administrative procedures and processes which can comply with the FCC Order; and

**WHEREAS**, on January 8, 2019, the Council adopted permitting regulations for small wireless facilities pursuant to Ordinance No. 967 and simultaneously adopted Ordinance No. 968 which established interim aesthetic regulations and official controls for small wireless facilities; and

**WHEREAS**, over the last six months, the City Council held three Council meetings, and two public hearings to solicit and receive public testimony regarding these wireless code amendments; and

**WHEREAS**, contemporaneously with the consideration of this Ordinance, the City Council considered and enacted amendments to MMC Title 20 by adopting a new Chapter 20.38 authorizing and establishing permanent aesthetic standards for the deployment of small wireless facilities pursuant to Ordinance No. 975 and

**WHEREAS**, the City Council finds that adopting the revised applications requirements related to small wireless facilities as set forth in the sections below will further the public's health, safety, and welfare.

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

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**Section 1. Findings.** The City Council adopts the recitals above and further finds that this ordinance is necessary, in conjunction with Ordinance No. 975, to address potential applications for small wireless facilities within the presumptive safe harbor review periods prescribed by the FCC Order.

**Section 2. 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:

“Access Easement” means any lane, road, avenue, driveway, etc. that is shared among one or more residents and dedicated for private ingress and egress purposes in a legal document which is recorded with King County Property Records;

“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;

“Antenna” means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15;

“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;

“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;

“Collocation” 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

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the mounting or installing of transmission equipment on an eligible support structure for the purposes of transmitting and/or receiving radio frequency signals for communications purposes;

“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 Development Services 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 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;

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“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;

“Public right-of-way” or “right-of-way” means land acquired or dedicated for public roads and streets but does not include:

1. Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;
2. Structures, including poles and conduits, located within the right-of-way;
3. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the state parks and recreation commission; or
6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec 912 and related provisions of federal law that are not open for motor vehicle use.

~~“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 telecommunication 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(l);

“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 telecommunication service (whether on its own or comingled with other types of services);

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“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;

“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;

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

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

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

“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



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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 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;

“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 3.** Amendment to MMC Chapter 19.14. MMC Chapter 19.14 – Small Wireless Deployment is hereby repealed and replaced in its entirety as follows:

**MMC 19.14 – Small Wireless Facility Deployment**

**Sections:**

19.14.010	Application process.
19.14.020	Small wireless facility permit applications.
19.14.030	Review process.
19.14.040	Permit requirements.
19.14.050	Modifications.
19.14.060	Consolidated permit.
19.14.070	Annual inspection required.
19.14.080	Appeals.
19.14.090	Removal of abandoned facilities.

**19.14.010 Application process.**

A. Any application for a small wireless facility both inside and outside of the city’s right-of-way shall comply with the application requirements for a small wireless facility permit described in this chapter. For small wireless facilities inside the city right-of-way, the applicant must also comply with the requirements pursuant to MMC 19.12.

B. Consistent with MMC 19.14.060 all permits, and leases necessary for the deployment of small wireless facilities and, if applicable an application for franchise, shall be consolidated for review and a decision rendered to the full extent feasible consistent within the presumptive timeframes established within federal and state law. Applicants are allowed to apply for franchises or leases independently of an application for a small wireless facility permit.

C. 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. Accordingly, 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

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the deployment of small wireless facilities. Applicants are encouraged and expected to provide all related applications listed in subsection (D) for each facility in one submittal, unless they have already obtained a franchise or lease.

D. 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 an application as provided herein.

1. Franchise. The process typically begins with and depends upon approval of a franchise for the use of the city right-of-way to deploy small wireless facilities if any portion of the applicant's facilities are to be located in the City right-of-way. An applicant with a franchise for the deployment of small wireless facilities in the City may apply directly for a small wireless facility permit and related approvals. An applicant at its option may utilize phased deployment.

2. Small Wireless Facility Permits. The application requires specification of the small wireless facility components and locations as further required in the small wireless permit application described in MMC 19.14.020. Prior to the issuance of a small wireless facility permit, the applicant shall pay a permit fee in an amount as determined by the City Council and adopted by resolution, or the actual costs incurred by the City in reviewing such permit application.

3. Associated Permit(s). The applicant shall attach all associated required permit applications including but not limited to applications required under MMC 19.12, and applications or check lists required under the City's 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 MMC 20.38.080.

4. Leases. An applicant who desires to attach a small wireless facility to any structure owned by the City shall include an application for a lease as a component of its application. Leases for the use of public property, structures, or facilities shall be submitted to the City Council for approval.

**19.14.020 Small wireless facility permit application.**

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

1. The location of overhead and underground public utility, telecommunication, cable, water, adjacent lighting, sewer drainage and other lines and equipment within 50

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feet of the proposed project area (which the project area shall include the location of the fiber source and power source). Further, the applicant shall include all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 50 feet from the proposed project area.

2. The specific trees, structures, facilities, lines and equipment, and obstructions, if any, that the 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.

3. 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, to the extent to which the applicant is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements. Where another party is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements, applicant's construction drawings shall include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain fiber and electric service to the small wireless facility.

4. Compliance with the aesthetic requirements of MMC 20.38.070 or with MMC 20.38.080 as applicable.

B. 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. For locations outside the city right-of-way, 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. 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 facility 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 or structure.

C. The applicant can batch multiple small wireless facility sites in one application. The applicant is encouraged to batch small wireless facility sites when they are proposed for approval at the same time and are in a contiguous service area or use the same design.

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

1. 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 shall demonstrate that no technically feasible alternative location exists which is not in front of the same residential parcel.

2. 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.

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E. Any application for a small wireless facility permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter MMC 18.04. Further, any application proposing small wireless facilities in Shoreline Management Zones (pursuant to MMC 20.60) 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.

F. 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 facility 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 facility 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.

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

H. A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that the construction plans and final construction of the small wireless facilities and structure or pole and foundation are designed to reasonably withstand required loads as well as wind and seismic loads, or in the case of a utility owned structure, written confirmation that the pole will support the additional loads.

I. Applicant materials required for a building permit and a right of way permit to the extent applicable.

J. An initial build out plan as of the date of the application that includes the applicant's proposed plan for deployment of small wireless facilities within the City. The city's preference is for the applicant to provide a two (2) year proposed build out plan. The initial build out plan shall include the following:

1. A list of the actual and proposed locations of the applicant's small wireless facilities.
2. A 500-scale map (1 inch equals 500 feet) of the City depicting the geographic location and boundaries of the actual and proposed locations of the applicant's small wireless facilities.

K. 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.

L. Such other information as the Director, in his/her discretion, shall deem appropriate to effectively evaluate the application based on technical, engineering, and aesthetic considerations.

**19.14.030 Review process.**

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

1. In any zone, upon application for a small wireless facility permit, the City will permit small wireless facility on existing or replacement utility poles or other structures conforming to the City's generally applicable development and design standards adopted pursuant to MMC 20.38.070.

2. 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.

3. 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.

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

5. 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.

B. Final Decision. Small wireless facilities on existing replacement, or new infrastructure shall be reviewed and approved by the Director. The Director's decision is final.

C. 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 MMC 20.37.190 when the modification does not defeat the concealment elements of the small wireless facility.

D. 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.

E. Collaborative Review. **The Director may request the applicant produce a representative to collaboratively review application materials with City staff on an as needed basis or at least once 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

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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.

F. Public Notice and Informational Meeting Requirement. Within 15 days of submission of a complete application, the applicant shall provide written notification for each application, or batch applications to all property owners within five hundred (500) feet of the proposed location(s) and notice of the informational meeting, as part of the permit submittal. Only one informational meeting per application or batched application is required. The notice shall include the following:

1. The date, and time for the informational meeting. All informational meetings shall be held at Medina City Hall with at least one City staff member present.
2. A description of the proposed installation, including the proposed dimensions, design, color, type of facility, proposed location, identification of alternative locations that would meet project objectives, and the date of the informational meeting. In lieu of providing all of this information as part of the notice, the applicant may produce a webpage containing this information and direct residents to its location.
3. A rendering of the proposed facility shall be included in the notification.
4. The applicant shall provide the City with a distribution list of property owners and a copy of the materials distributed.

The applicant shall hold the informational meeting for the public within 30 days of submission of a complete application. These informational meetings are for the public's information and are neither hearings nor part of any land use appeal process.

G. Withdrawal. Any applicant may withdraw an application submitted pursuant to MMC 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.

H. Supplemental Information. Failure of an applicant to provide additional information as requested pursuant to MMC 19.14.020 by the Director within sixty (60) days of notice by the Director 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 permit holder shall comply with all of the requirements within the small wireless permit.

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

C. Permit Time Limit. Construction of the small wireless facility must be completed within twelve (12) months after the approval date by the City. The permit holder may request one (1) extension to be limited to six (6) months, if the permit holder cannot construct the small wireless facility within the original twelve (12) month period.

D. Site Safety and Maintenance. The permit holder must maintain the small wireless facilities in safe and working condition. The permit holder 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.

E. Operational Activity. The permit holder shall commence operation of the small wireless facility no later than six (6) months after installation. **The permit holder may request one (1) extension to be limited to six months if the permit holder can show that such operational activity is delayed due to factors outside the control of the permit holder.**

F. **Security. Security of the small wireless facility is an integral component of operation. The applicant shall comply with any federal order regarding the security of its telecommunications network.**

**19.14.050 Modifications.**

A. If a small wireless facility permit holder 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, the applicant shall apply for a small wireless facility permit or eligible facilities request as may be required by MMC 20.37.190.

B. Each small wireless facility permit holder shall conduct new RF emissions testing upon modification of a permitted small wireless facility or if the FCC requires a new NIER report for the activity undertaken. The purpose of this test is to validate that the RF emissions are in compliance with the FCC's regulations and standards.

1. All such tests required by this section shall be performed and certified by a licensed electrical engineer, or by a person with equivalent capabilities approved by the City Engineer.
2. Copies of each and every RF emissions test shall be submitted to the City Engineer on the first day of the month following the month in which the test is performed.

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3. If at any time a RF emissions test shows that the RF emissions emanating from a small wireless facility exceeds the standards established by the FCC, the permit holder shall immediately notify the City and shall take any and all action to remediate the problem as required by the FCC. The small wireless facility shall not be reconnected until the permit holder demonstrates compliance with the FCC requirements.

C. 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 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 19.12 MMC.

**19.14.060 Consolidated Permit**

A. The issuance of a small wireless facility 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 city 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 City will endeavor to issue small wireless facility permit within the presumptively reasonable time limits established by federal law for small wireless facilities.

B. The general standards applicable to the use of the rights-of-way described in MMC Title 19 shall apply to all small wireless facility permits.

**19.14.070 Annual inspection for small wireless facilities required.**

Each grantee shall conduct an annual inspection of its facilities located within the City, at the grantee's expense, and complete a written report of its inspection for submission to the City Engineer. **The report shall indicate whether the facility is operational and whether it is operating.** In addition, if the inspection reveals any problems, the report shall include a proposed fix or correction action plan.

**19.14.080 Appeals.**

Small wireless facilities permit decisions are final decisions appealable to the King County Superior Court. Applicant may proceed forward with a permitted project that has been appealed at applicant's own risk and subject to any subsequent court decision that may impact applicant's ability to install such facilities.

**19.14.090 Removal of abandoned small wireless facilities.**



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A. Any small wireless facility that, after the initial operation of the facility, is not used for the purpose for which it was intended at the time of filing the application for a continuous period of twelve (12) months shall be considered abandoned.

B. The telecommunication carrier of such abandoned small wireless facility shall remove the same within 90 days of receipt of a notice from the City notifying the owner or operator of such abandonment.

C. Whenever a facility is abandoned or ceases operation, the entire facility shall be removed, including, but not limited to, all antennas, antenna supports, feeder lines, base stations, electronic equipment, and the pole upon which the small wireless facility is located, unless the City determines that such pole shall remain. Failure to remove such an abandoned facility shall result in declaring the small wireless facility a public nuisance. **If there are two or more users of a single pole, then this subsection (C) shall not become effective until all users cease using the pole.**

**Section 4. 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 5. 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 6. Effective Date.** This ordinance shall be in full force and effective five (5) days from the passage and published in accordance with law.

Passed by the City Council of the City of Medina and approved by the Mayor this 8th day of July, 2019.

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

Attested to by:

Approved as to form:

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

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

PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.: / AB

**Ordinance No. 975**  
**AN ORDINANCE OF THE CITY OF MEDINA, WASHINGTON CONCERNING WIRELESS  
COMMUNICATION FACILITIES; AMENDING MMC CHAPTERS 20.12 AND 20.37;  
ESTABLISHING A NEW CHAPTER MMC 20.38 RELATED TO DESIGN STANDARDS FOR  
SMALL WIRELESS FACILITIES; PROVIDING FOR SEVERABILITY;  
AND ESTABLISHING AN EFFECTIVE DATE.**

---

**WHEREAS**, the Federal Communications Commission (“FCC”) recently adopted a Declaratory Ruling and Third Report and Order 18-133 (“FCC Order”) governing small wireless facilities, which imposes limitations on the processing of all permits associated with the deployment of small wireless facilities and requires the City of Medina (“City”) to adopt aesthetic standards for such deployments; and

**WHEREAS**, federal law and regulation establishes both substantive and procedural limitations, upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station, known as “eligible facility requests”; and

**WHEREAS**, the City Council finds that the existence of the federal regulations requires the adoption and implementation permanent local development and zoning regulations and review procedures that are consistent with federal laws and regulations on wireless communication facilities, including small wireless facilities and eligible facility requests; and

**WHEREAS**, on January 8, 2019, pursuant to Ordinance No. 968, the City Council adopted interim land use regulations and official controls pursuant to RCW 36.70A.390 and RCW 35.63.200 relating to small wireless regulations; and

**WHEREAS**, simultaneously with the adoption of Ordinance No. 968, the City Council adopted initial permitting procedures for small wireless facilities pursuant to Ordinance No. 967; and

**WHEREAS**, over the last six months, the City Council has held three council meetings, two public hearings, and received staff recommendations regarding revisions of the interim land use regulations and officials controls as well as the permitting procedures for small wireless facilities; and

**WHEREAS**, concurrently with the consideration of this Ordinance, the City Council considered and enacted amendments to MMC Title 19 by adopting revised permitting procedures for small wireless facilities pursuant to Ordinance 974; and

**WHEREAS**, the City Council desires to adopt the permanent land use regulations and controls set forth in the sections below.

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

**Section 1. Findings.** The City Council hereby makes the following findings:

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1. This ordinance amending the City's municipal code adopting regulations related to wireless communication facilities imposes restrictions necessary to protect public health and safety, while not unreasonably discriminating among providers of functionally equivalent services nor having an effect of prohibiting personal wireless services within the City.
2. These proposed regulations were properly sent to the Washington State Department of Commerce for expedited review on June 11, 2019 as required by the Growth Management Act and received approval on June 25, 2019.
3. The City issued a SEPA threshold Determination of Non-Significance for the proposed regulations on June 13, 2019 and the comment and appeal period for the Determination of Non-significance expired on June 27, 2019 with no comments received or appeals filed.
4. Public hearings to solicit and receive citizen comment were held on May 13, 2019 and July 9, 2019.
5. The requirements of MMC 20.81.040 for land use code amendments have been met.
6. As required by MMC 20.81.080, the adoption and amendment of codes in the following sections are consistent with the Medina Comprehensive Plan, serve to advance the public health, safety and welfare, and advances the public interest of the community.
7. The above recitals are adopted as additional findings in support of this ordinance.

**Section 2.** Amendment to MMC 20.12.040. Medina Municipal Code Section 20.12.040 is hereby amended by the removal of the definition for "coverage gap".

**Section 3.** Amendment to MMC 20.12.200. Medina Municipal Code Section 20.12.200 is hereby amended by the removal of the definition for "significant gap in service coverage".

**Section 4.** Amendment to MMC 20.37.030(A). The Medina Municipal Code Section 20.37.030(A) is hereby amended as follow by the addition of the following provision:

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 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;

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- 8. Small wireless facilities as defined in MMC 19.02.020, and which are subject to Chapter 20.38 MMC; and
- 9. Routine maintenance, repair, and replacement of telecommunication facilities that does not substantially change, as defined in MMC 20.37.190(A)(6), the eligible support structure, and which are subject to MMC 20.37.190.

**Section 5.** Amendment to MMC 20.37.030. The Medina Municipal Code Section 20.37.030 is hereby amended by the addition of section (C) as follows:

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

**Section 6.** Amendment to MMC 20.37.070. The Medina Municipal Code Section 20.37.070(B)(3)(b) is here by amended as follows:

The increase in height is the minimum necessary to avoid prohibiting or having the effect of prohibiting the provisions of personal wireless services a significant gap in service coverage on the SR 520 floating bridge;

**Section 7.** Amendment to MMC 20.37.080(B). The Medina Municipal Code Section 20.37.080(B)(1) is hereby amended as follows:

Either the increase in height is established by the applicant as the minimum necessary to avoid prohibiting or having the effect of prohibiting the provisions of personal wireless services within the City eliminate a significant gap in service coverage, or the increase in height is established by the applicant as the minimum necessary to separate components of the wireless communication facility from the electrical primary lines;

**Section 8.** Amendment to MMC 20.37.080(C). The Medina Municipal Code Section 20.37.080(C)(6) is hereby amended as follows:

6. The hearing examiner may approve deviations from the standards in subsections (B), (C)(3), (4) and (5), and (E) of this section under a nonadministrative special use permit provided the applicant can demonstrate the deviation will satisfy the following criteria:

- a. Without the deviation, the telecommunications provider would be prohibited from providing telecommunication service to the City; There exists an actual (not theoretical) significant gap in service coverage;
- b. The proposed deviation ~~will be~~ is designed and located ~~to remove the significant gap in service coverage in a manner that is,~~ in consideration of the values, objectives, and regulations set forth in this chapter, including subsection (C)(2) of this section, the zoning code, and the comprehensive plan, the least intrusive upon the surrounding area;
- c. The granting of the deviation will not be detrimental to the public welfare;
- d. ~~The proposed least intrusive deviation is the minimum deviation necessary to resolve the significant gap in service coverage;~~

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e. No other less intrusive and feasible, alternative technologies, existing support structures, or alternative sites are available that do not prohibit or have the effect of prohibiting the provisions of personal wireless services will allow the applicant to resolve the significant gap in service coverage without a deviation from the standard.

**Section 9.** Amendment to MMC 20.37.120. The Medina Municipal Code Sections 20.37.120(E) and (F) regarding exceptions to the requirement for a nonadministrative special use permit are hereby repealed in their entirety.

**Section 10.** Amendment to MMC 20.37.130. Medina Municipal Code Section 20.37.130(C) is hereby repealed in its entirety.

**Section 11.** Amendment to MMC 20.37.140. Medina Municipal Code Section 20.37.140 is hereby repealed in its entirety.

**Section 12.** Amendment to MMC 20.37. Medina Municipal Code Chapter 20.37 is here by amended by the addition of new Section 20.37.190 – Eligible Facilities Requests:

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this Section 20.37.190.

1. “Base Station”: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:
  - a. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
  - b. 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).
  - c. 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.
  - d. 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.
2. “Collocation”: The mounting or installation of transmission equipment on an

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eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

3. "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:

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

4. "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.

5. "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.

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

- a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (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;
  - b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (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;
  - c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
  - d. It entails any excavation or deployment outside the current site;
  - e. It would defeat the concealment elements of the eligible support structure;
- or

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

7. "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.

8. "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.

B. 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.

C. 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 application qualifies as an Eligible Facilities Request.

D. 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.

E. 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.

1. 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.

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

3. 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-

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section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

F. 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.

G. 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.

**Section 13.** Amendment to MMC Title 20. Medina Municipal Code Title 20 is here by amended as follows by the addition of new Chapter 20.38 – Small Wireless Facilities:

**Sections:**

20.38.010	Purpose.
20.38.020	Definitions.
20.38.030	General provisions.
20.38.040	Applicability.
20.38.050	Hierarchy for small wireless facility placement.
20.38.060	Design Zones for small wireless facilities.
20.38.070	Design and concealment standards for small wireless facility deployments.
20.38.080	New poles for small wireless facilities in the right-of-way or for deployments in Design Zones.

**20.38.010 Purpose.**

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

- A. Ensure that residents receive the best technology possible while siting the technology in a respectful and thoughtful manner.
- B. Minimize potential adverse visual, aesthetic, and safety impacts of small wireless facilities.
- C. Establish objective standards for the placement of small wireless facilities.
- E. Ensure that such standards allow competition and do not unreasonably discriminate among providers of functionally equivalent services.
- D. Provide clear and predictable permitting requirements for service providers and the community.
- E. Encourage the design of such small wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.



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F. Provide an opportunity for residents and interested parties to provide comment on the proposed location and design of new small wireless facilities;

G. 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.

H. Protect the public health, safety and welfare.

**20.38.020 Definitions.**

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

**20.38.030 General provisions.**

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

B. Small wireless facilities located outside of the city rights-of-way are permitted subject to a valid small wireless facility permit. A different use of an existing structure on the same lot shall not preclude the installation of a small wireless facility.

C. Small wireless facilities located within the city right-of-way pursuant to a valid franchise are permitted uses in every zone of the city.

**20.38.040 Applicability.**

A. Applicability. The placement of any small wireless facility in any location within the city is subject to the provisions of this chapter.

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

C. Franchise Required. In addition to the requirement of obtaining a small wireless facility permit, if all or a portion of the small wireless facility will be located within the city's right-of-way, the applicant shall be required to enter into a franchise agreement, consistent with MMC 19.02.140, with the City for the use of the city's right-of-way and comply with the requirements pursuant to MMC Title 19.

D. Lease Required. In addition to the requirement of obtaining a small wireless facility permit, if all or a portion of the small wireless facility will be located upon a city-owned structure, or upon non-right-of-way property, which is either city-owned or city-leased, the applicant shall be required to enter into a lease agreement with the City for the use of the city property.

**20.38.050 Hierarchy for small wireless facility placement.**

A. The City's preference is for applicants to deploy small wireless facilities as follows:

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1. On existing or replacement wooden poles.
2. If an applicant would like to place a new metal pole, it should be placed along 84<sup>th</sup> Avenue between NE 12<sup>th</sup> Street and NE 28<sup>th</sup> Street.
3. If an applicant would like to place a pole in an undergrounded area, any new or replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole designs utilized within the contiguous right-of-way (or the City's preferred standard pole design, if applicable) and comply with the concealment standards in MMC 20.38.070.

**20.38.060 Design Zones for small wireless facilities.**

A. The following zones are designated as Design Zones for the purpose of siting small wireless facilities:

1. Medina Park located at 7789 NW 12<sup>th</sup> Street;
2. Medina Beach Park located at 501 Evergreen Point Road;
3. Fairweather Nature Preserve (also referred to as Fairweather Nature Preserve and Park) located at 2857 Evergreen Point Road;
4. Viewpoint Park located at Overlake Drive West and 84<sup>th</sup> Avenue NE;
5. Lake Lane Park located in the 3300 block of 78<sup>th</sup> Place NE.

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

C. Applications for small wireless facilities within Design Zones must comply with a concealment element design described in MMC 20.38.080. Such applications are subject to review and approval or denial by the Director.

**20.38.070 Design and concealment standards for small wireless facility deployments.**

Small wireless facilities whether permitted inside or outside the city right-of-way shall conform to the following design standards.

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

1. Upon adoption of a city standard small wireless facility pole design(s) within the City's Standards, Specifics and Details Manual, the applicant shall utilize such pole design or may request modifications to the standard pole design to accommodate its small wireless facility without substantially changing the outward visual and aesthetic

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character of the design. The applicant, upon a showing that use or modification of the standard pole design is either technically or physically infeasible, or that the modified pole design will not comply with the city's ADA, or sidewalk clearance requirements and/or would violate electrical or other safety standards, may deviate from the adopted standard pole design and use the design standards as adopted in this subsection A.

2. The applicant shall minimize to the extent possible the antenna and equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment. In no event shall the equipment enclosure and all other wireless equipment associated with the small wireless facility (including but not limited to conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole exceed twenty-eight (28) cubic feet. **An equipment enclosure up to fifteen (15) cubic feet, excluding the antenna, is allowed on the exterior of the pole. Any equipment enclosures exceeding the fifteen (15) cubic feet allowance shall be installed within the pole or underground.** The following design criteria shall apply as applicable depending on the location of the antenna and equipment:

(a) Located on a pole. If located on a pole, antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning for antennas no more than twelve (12) inches off of the pole and for associated equipment no more than six (6) inches off the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs or the equipment itself. The applicant may install a side mounted canister antenna, so long as the inside edge of the antenna is no more than six (6) inches from the surface of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole.

(b) 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. The diameter of the pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a twenty (20) inches measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole. The pole shall comply with the requirements in subsection E(4) below

(c) 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.

(d) On private property. If located on private property, the applicant shall submit a copy of a letter of authority from the private property owner prior to the

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small wireless facility permit issuance.

2. 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 and 5G 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.

3. 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, or the City's new preferred standard pole design if applicable, and conform to the applicable requirements in subsection E below.

4. The height of any replacement pole and associated antennas 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.

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

B. Wooden pole design standards. Small wireless facilities located on wooden poles inside or outside the city right-of-way shall conform to the following design criteria:

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

2. A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.

(a) 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.

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3. Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City, and in addition shall conform to the applicable requirements in subsection E below.
4. Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.
5. Antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.
6. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna shall not be more than three (3) cubic feet in volume.
7. A canister antenna may be mounted on top of an existing or replacement 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 install a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.
8. The furthest point of any antenna or equipment enclosure may not extend more than twenty-eight (28) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.
9. An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.
10. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.
11. The applicant shall minimize to the extent possible the antenna and equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment. In no event shall the equipment enclosure and all other wireless equipment associated with the small wireless facility (including but not limited to conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole exceed twenty-eight (28) cubic feet. **An equipment enclosure up to fifteen (15) cubic feet, excluding the antenna, is allowed on the exterior of the pole. Any equipment enclosures exceeding the fifteen (15) cubic feet allowance shall be installed underground.** The follow design criteria shall apply as applicable depending on

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the location of the antenna and equipment:

(a) Located on a pole. If located on a pole, antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning for antennas no more than twelve (12) inches off of the pole and for associated equipment no more than twelve (12) inches off the pole if necessary for tilt, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs or the equipment itself. The applicant may install a side mounted canister antenna, so long as the inside edge of the antenna is no more than six (6) inches from the surface of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole.

(b) Located Underground. 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.

(c) Located on private property. If located on private property, the applicant shall submit a copy of a letter of authority from the private property owner prior to the small wireless facility permit issuance.

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

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

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

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

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

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

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2. The interruption of architectural lines or horizontal or vertical reveals is discouraged.
  3. New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.
  4. Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
  5. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
  6. Small wireless facilities shall be painted and textured to match the adjacent building surfaces, unless otherwise technically infeasible.
  7. Small wireless facilities must meet the height requirement of the underlying zoning district.
  8. Feed lines and coaxial cables shall be located below the parapet of the rooftop or otherwise concealed from view.
  9. If a cabinet enclosure cannot be located within the building where the small wireless facilities will be located, then the City's first preference is for the wireless telecommunication carrier to locate the equipment on the roof of the building. If the equipment can be screened by placing the equipment below the parapet walls, no additional screening is required. If screening is required, the proposed screening must be consistent with the existing building in terms of color, design, architectural style, and material. If the cabinet equipment cannot be located on the roof or within the building, then it shall be located underground consistent with subsection E(1).
- D. Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.
1. Each strand mounted facility shall not exceed four (4) cubic feet in volume.
  2. Only one strand mounted facility is permitted per cable between any two existing poles.
  3. The pole must be able to support the necessary load requirements of the strand mounted facility.
  4. 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;
  5. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic.

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6. Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets.
7. Pole mounted equipment shall comply with the requirements of subsections A and B above.
8. 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).
9. Strand mounted facilities are prohibited on non-wooden poles, unless the existing pole has pre-existing communication wirelines.

**E. General requirements.**

1. 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.
2. No equipment shall be operated so as to produce noise in violation of Chapter 8.06 MMC.
3. 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.
4. 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.
5. Replacement poles shall be located no more than five (5) feet from the existing pole with the requirement to remove the abandoned pole.
6. 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 or as otherwise required by law and be of the minimum amount possible to achieve the intended purpose needed to meet applicable law, regulations, and standards; provided that, signs are permitted as concealment element techniques where appropriate.
7. 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.



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8. 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.
9. The preferred location of a small wireless facility on a pole is the location with the least visible impact.
10. Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached. Antennas, equipment enclosures, and ancillary equipment, conduit and cable is encouraged to be integrated within the pole when technically feasible.
11. Except for locations in the city right-of-way or within access easements on private property within property owner permission, small wireless facilities are not permitted on any property containing a residential use in the residential zones.
12. 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.
13. 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 effectively prohibit the applicant from providing a wireless service, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

**20.38.080 New poles for small wireless facilities in the right-of-way or for deployments in Design Zones.**

- A. New poles or structures for small wireless facilities or for installations of small wireless facilities in a Design Zone are only permitted if the applicant can establish that:
  1. The proposed small wireless facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights-of-way or access easement such as public property, a building, a transmission tower, or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;
  2. The proposed small wireless facility complies with the applicable requirements of MMC 20.38.070(E);
  3. The proposed small wireless facility receives approval for a concealment element design, as described in MMC 20.38.080(C) below;
  4. For access easements, the property owner(s) has given written permission for the placement of a new pole within the access easement in such a manner so as to not frustrate the purpose of the easement or create any access or safety issue and shall be

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in compliance with all land use regulations such as, but not limited to, setback requirements;

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

6. 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

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

B. An application for a new pole or deployment in a Design Zone is subject to review and approval or denial by the Director.

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

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

2. If the Director has already approved a concealment element design either for the applicant or another small wireless facility along the same city right-of-way, if applicable, 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.

D. Even if an alternative location is established pursuant to MMC 20.38.080(A)(1) the Director may determine that a new pole 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.

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E. Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the city 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 when the replacement is necessary for the installation or attachment of small wireless facilities, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the small wireless facility is more than sixty (60) feet.

F. 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 effectively prohibit the applicant from providing a wireless service, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

**Section 14. 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 15. 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 16. Effective Date.** This ordinance shall be in full force and effective five (5) days from the passage and published in accordance with law.

Passed by the City Council of the City of Medina and approved by the Mayor this 8th day of July, 2019.

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

Attested to by:

Approved as to form:

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

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

PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.: / AB