

MEMORANDUM

DATE: April 26, 2023
TO: Medina City Council
FROM: Emily Romanenko – Assistant City Attorney
RE: Small Wireless Facility Permit Overview

The purpose of this memorandum is to: (1) address the scope of the City’s ability to regulate the deployment of small wireless facilities (“SWF”), (2) provide an overview of the SWF permit process, and (3) provide an update on the status of T-Mobile’s SWF permit application.

I. City’s Ability to Regulate SWF

By way of background, SWF are cellular installations meant to supplement existing 4G networks and to facilitate the rollout of future 5G networks. These installations are significantly smaller than existing macro installations and are/will be located closer to the end user. This means that small wireless installations will be focused on the rights-of-way and adjacent areas.

In 2018, the Federal Communications Commission (“FCC”) had issued a range of new rules that governed how the City is allowed to regulate SWF. Under these new rules, cities are prohibited from restricting the placement of SWF within the right-of-way; however, cities can adopt objective aesthetic and safety standards that are prescriptively applied. This means that if the applicant meets the adopted standards, the permit must be approved. Additionally, the FCC established presumptively reasonable permit review timelines (“shot clocks”) within which wireless permits needed to be reviewed. During the winter of 2018, the City undertook a review and update of its wireless facilities code to ensure compliance with the 2018 FCC regulations.

As part of its wireless code update, the City Council reviewed and approved aesthetic and safety standards that would ensure the safety of the residents while staying within the parameters of what the FCC allows cities to regulate. Thus, while the City cannot regulate the choice of technology used (meaning we cannot ask the applicant to use a different type of antenna that is less obtrusive or site the SWF in a different location), the City can, and did, adopt reasonable aesthetic and safety requirements, including limiting the height of associated antennas and/or replacement poles, and requiring concealment elements. Design and concealment regulations can be found in MMC 16.38.070 and include standards for deployment on non-wooden light or utility poles, wooden light or utility poles, and strand mounted facilities. However, because the design standards cannot materially inhibit or have the effect of materially inhibiting the deployment of SWF, if the applicant states that additional height is necessary to meet other regulations (for example clearance between power lines), the applicant can increase the height of the pole or antenna

to the minimum additional height necessary to meet those other regulations. FCC [18-133A1](#), para. 37, [47 U.S.C. § 253\(a\)](#) and [47 U.S.C § 332\(c\)\(7\)](#).

The City is also preempted from regulating SWF based on health and environmental concerns. [47 U.S.C § 332\(c\)\(7\)\(B\)\(iv\)](#). In 1996 and 1997, the FCC issued guidelines for use in evaluating environmental effects of radio frequency (“RF”) emissions from cellular towers. The guidelines established maximum permitted exposure (“MPE”) limits established by the Congressionally chartered National Council on Radiation Protection. Those guidelines still stand today, and SWF applicants are only required to ensure that their facilities meet the federally established MPE limits; as long as they do, they can deploy the facilities. To ensure the SWF deployed within the City meet these federal standards, the City requires applicants to submit a sworn affidavit signed by an RF engineer with knowledge of the proposed project affirming that the proposed SWF will be compliant with all FCC and other governmental regulations in connection with human exposure to RF emissions for every frequency at which the SWF operates. MMC 15.14.020(F).

II. SWF Permit Process

To deploy SWF within the City’s rights-of-way, the Medina Municipal Code (“MMC”) requires an applicant to obtain the following agreements and permits:

- A franchise agreement. The purpose of this agreement is to govern the applicant’s access to the City’s right-of-way. It is an “umbrella” agreement that contains provisions including insurance and indemnification requirements, permitting requirements, restoration requirements, and bonding requirements. Franchise agreements are approved legislatively by City Council. MMC 15.14.010(D)(1) and MMC 15.06.030.
- A SWF permit. This is a consolidated building permit that includes the construction plans, design standards, electrical and mechanical plans, and all the other permitting aspects that are typically included in a building permit. This consolidated permit grants the applicant the right to install their facilities on an existing or replacement pole in the right-of-way. SWF permits are approved administratively based on a prescriptive review of the code by the Development Services Director in conjunction with the Public Works Director. MMC 15.14.010(D)(2) and MMC 15.14.030(B).
- A site-specific license agreement. This agreement regulates the exact placement of new stand-alone equipment in the right-of-way. This agreement is used if the applicant wants to place any equipment on anything other than an existing, or replacement pole, in the right-of-way. As an example, an the applicant wanted to locate a new pole or place an underground vault in the right-of-way, they would need to obtain a site-specific license agreement. Site-specific license agreements are approved legislatively by City Council. MMC 15.14.010(D)(4).

- Other permits. Depending on the scope of the proposal, as determined through review of the small wireless facilities permit, other permits may also be required such as a right-of-way permit, grading and drainage permit, or a SEPA checklist. These types of permits are administratively approved by the Development Services Director in conjunction with the Public Works Director. MMC 15.14.010(D)(3).

Additionally, while not part of the permit review process, MMC 15.14.040(F) requires the applicant to hold an open house style meeting for the purposes of providing notice of the project to residents and providing an opportunity for residents to ask questions about the project. These meetings are for the public's information and are neither hearings nor part of any land use appeal process.

III. T-Mobile SWF Application

In 2021, T-Mobile proposed, through a pre-application meeting, to deploy SWF within the City. T-Mobile first applied for a franchise and, after the negotiation process, City Council approved a franchise with T-Mobile in September 2022, pursuant to Ordinance No. 1013. Upon receiving their approved franchise, T-Mobile then applied for a SWF permit to site a SWF on an existing utility pole at the corner of 84th Ave NE and Midland Road, and a site-specific license agreement to locate an underground vault in the right-of-way. City staff are currently reviewing the small wireless facilities permit and the site-specific agreement is scheduled to come to Council in May. Additionally, as required by MMC 15.14.040(F), T-Mobile is now scheduled to hold their open house today, April 26, 2023. As next steps, City Council will review and vote on the site-license agreement while City staff finish reviewing the SWF permit and any other associated permits.