CITY OF MERCER ISLAND
ORDINANCE NO. 19C-02

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, DECLARING AN EMERGENCY; ADOPTING INTERIM DESIGN AND CONCEALMENT STANDARDS FOR SMALL CELL FACILITIES DEPLOYMENT; PROVIDING FOR A PUBLIC HEARING; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission issued a Declaratory Ruling and Third Report and Order ("New Rules") relating to small cell facilities, which became effective January 14, 2019; and

WHEREAS, the New Rules significantly preempt the City's ability to regulate the installation of small cell facilities on City-owned public rights-of-way; and

WHEREAS, aesthetic requirements imposed by the City under the New Rules on installation of small cell facilities must be published in advance and must also be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective; and

WHEREAS, the City does not have design and concealment standards adopted for deployment of small cell facilities currently; and

WHEREAS, without adopted standards, the City may not impose design and concealment standards on applications for the deployment of small cell facilities under the New Rules; and

WHEREAS, the City Council finds that deployment of small cell facilities with unregulated design and concealment standards may result in uncoordinated installations, visual blight, interference with public facilities and equipment, and traffic dangers that pose harm to public health, safety, property, and welfare; and

WHEREAS, to prevent the potential harm to public health, safety, property, and welfare, the City Council concludes that the City immediately needs interim design and concealment standards for deployment of small cell facilities until permanent standards can be adopted following the process and procedures for adopting development regulations; and

WHEREAS, the City is authorized under RCW 35A.63.220, 36.70A.390 to pass an interim zoning and official control ordinance for up to six months, provided it holds a public hearing on the same within sixty days after passage; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, it is appropriate for the City Council to hold a public hearing and adopt findings of fact supporting and justifying the interim zoning and official control ordinance within at least sixty days of its passage; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. **Whereas Clauses Adopted.** The "Whereas Clauses" set forth in the recital of this Ordinance are hereby adopted as the preliminary findings and conclusions of the City Council for passing this Ordinance.

Section 2. **Declaration of Emergency.** As set forth in the "Whereas Clauses" adopted in Section 1 of this Ordinance, the City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon unanimous passage by the whole membership of the City Council, and that the same is not subject to a referendum (RCW 35A.11.090(2)) and is exempt from SEPA review (WAC 197-11-880 and MICC 19.07.120(D)).

Section 3. **Interim Standards Adopted.** Interim Design and Concealment Standards for Deployment of Small Cell Facilities are hereby adopted as set forth in Exhibit A to this Ordinance.

Section 4. **Public Hearing.** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be scheduled for 7:00 p.m. on March 5, 2019, which is within 60 days of this Ordinance passage, at Mercer Island City Hall, 9611 SE 36th Street, during the City Council's regular meeting, or as soon thereafter as the business of the City Council shall permit, in order to hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the interim standards imposed by this Ordinance and to consider adopting further findings of fact if needed.

Section 5. **Duration of Interim Standards.** The Interim Design and Concealment Standards for Deployment of Small Cell Facilities approved by this Ordinance shall become effective immediately, on the date hereof, and shall continue in effect for an initial period of six months, unless repealed, extended or modified by the City Council after subsequent public hearing(s), entry of appropriate findings of fact, and or development of a work plan for related studies pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 6. **Severability.** If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this Ordinance or its application to any other person, property or circumstance.

Section 7. **Effective Date.** This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, property, and welfare, shall take effect and be in full force and effect immediately upon its unanimous passage by the entire membership of the City Council as required by RCW 35A.11.090(2) and 35A.13.190.

Passed unanimously by the City Council of the City of Mercer Island, Washington, at its regular meeting on the 15th day of January 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

D. Bertlin

Debbie Bertlin, Mayor

Approved as to Form:

Kari L. Sand, City Attorney

ATTEST:

Deborah A. Estrada, City Clerk

Date of Publication: 1/23/2019

DRAFT
Code Amendments
Small Cell Facilities Design and Concealment Interim Standards

GENERAL REGULATIONS
19.06.070 Small Cell Deployment.
19.06.075 Small Cell Deployments – Design and Concealment Standards.

DEFINITIONS
19.15.030 Land Use Review Types.

DEFINITIONS
19.16.010 Definitions.

"Normal Text" is existing code language
"~~Strikethrough Text~~" is existing code language that will be deleted
"Underline Text" is new code language that will be added
"..." represents that existing code language is omitted and will not be amended

19.06.070 ~~Bonding and insurance~~Small cell facilities deployment.

The following provisions establish standards for small cell facilities deployments; provided, however, that any small cell or small cell network component which is not exempt from SEPA review shall also comply with chapter 19.07 MICC:

(1) Small Cell Facility Approval Required. Small cell facilities are permitted in all zoning designations subject to a Type II land use review process pursuant to chapter 19.15 MICC. In addition to the small cell approval, one or more right-of-way use permits may also be required for small cell deployment.

(2) Previously Approved Small Cells on Existing or Replacement Utility Poles. Eligible small cell facilities permitted under the provisions of a franchise approval prior to the adoption of these standards shall be considered to have satisfied the design and concealment standards when installed and maintained in accordance with the franchise agreement.

(3) Replacement Utility Pole – Street Lighting. With the express permission of the City, a replacement utility pole or a new utility pole may be permitted in the form of a new street light standard. The design of the street light standard shall be in accordance with the City lighting requirements in effect at the time of application. Wherever technologically feasible, all equipment and cabling shall be internal to the replacement street lighting standard, or concealed through the design and implementation of a concealment plan.

(4) Undergrounded Utility Areas. A service provider or infrastructure company desiring to locate any aboveground infrastructure in an undergrounded utility area shall provide a separate, standalone pole. Pole design to be approved by the City pursuant to MICC 19.06.075(6)(d).

19.06.075 Small Cell Deployments – Design and concealment standards.

Small cell deployments, whether permitted on the right-of-way pursuant to a franchise or in accordance with this chapter, shall conform to the design standards set forth in this section.

(1) Small Cell Deployment Design Standards - General Requirements. All small cell deployments shall comply with the following provisions:

(a) Ground-mounted equipment in the rights-of-way is prohibited unless such facilities are placed underground 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 plan pursuant to subsection (7). Generators located in the rights-of-way are prohibited.

(b) No equipment shall be operated so as to produce noise in violation of chapter 8.24 MICC.

(c) Small cell facilities are not permitted on traffic signal poles.

(d) Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, and state and federal regulations in order to provide a clear and safe passage within the rights-of-way.

(e) Replacement poles shall be located as near as possible subject to approval by the City Engineer to the existing pole with the requirement to remove the abandoned pole.

(f) 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, and any such signage on equipment enclosures shall be of the minimum amount possible to achieve the intended purpose; provided, that signs are permitted as concealment element techniques where appropriate.

(g) 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 plan.

(h) Side arm mounts for antennas or equipment are prohibited.

(i) The preferred location of a small cell facility on a pole is the location with the least visible impact.

(j) Antennas, equipment enclosures, and ancillary equipment, conduit and cable shall be located within the building or pole to the maximum extent feasible.

(k) Antennas, equipment enclosures and ancillary equipment, conduit and cable shall not adversely affect the aesthetic appearance or visual character of the building or pole upon which they are attached.

(l) The City may consider the cumulative visual effects of small cells mounted on poles, together with existing utility equipment, within the rights-of-way 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 service provider.

(m) The design criteria as applicable to small cell facilities described herein shall be considered concealment elements and such small cell facilities may only be expanded upon an eligible facilities request described in chapter 19.06 MICC, when the modification does not defeat the concealment elements of the facility.

(2) Small Cell Facilities Attached to Nonwooden Poles. Small cell facilities attached to existing or replacement nonwooden light poles and other nonwooden poles in the right-of-way or poles outside of the right-of-way shall conform to the following design criteria in addition to the General Requirements set forth in subsection (1) above:

(a) Antennas and the associated equipment enclosures shall be sited and installed in a manner which minimizes the visual impact on the streetscape either by either:

i. Fully concealing the antennas and associated equipment fully within the pole; or,

ii. Through a concealment plan which provides an equivalent or greater impact reduction pursuant to subsection (7), below.

(b) All conduit, cables, wires and fiber must be routed internally in the light pole. Conduit, cables, wires and fiber extending outside the pole to connect with externally mounted antennas or equipment shall be located within shrouds, canisters, or sleeves.

(c) An antenna on top of an existing pole may not extend more than six feet above the height of the existing pole and the diameter may not exceed 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 they appear as a continuation of the original pole, including colored, powder coated, or other permanent coloration, to match the pole, and shall be shrouded or screened to blend with the pole. 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.

(d) In addition to the increased antenna height allowed in subsection (c) above, the height of any replacement pole may not extend more than 10 feet above the height of the existing pole or the minimum additional height necessary for adequate clearance from electrical wires, whichever is greater.

(e) Any replacement nonwooden pole shall substantially conform to the design of the pole it is replacing, or the applicable City pole design standards.

(f) The diameter of a replacement pole shall comply with applicable setback and sidewalk clearance requirements, ADA requirements, and if a replacement light standard then with the City's lighting requirements.

(g) The use of the pole for the siting of a small cell 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 cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

(3) Wooden Pole Design Standards. Small cell facilities located on wooden poles shall conform to the following design criteria in addition to the General Requirements set forth in subsection (1) above:

(a) The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small cell facility; provided, that the replacement pole shall not exceed a height that is a maximum of 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.

(b) 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 10 feet unless a further height increase is required and confirmed in writing by the pole owner and such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. 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.

(c) Replacement wooden poles may 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.

(d) Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored, powder coated, or other permanent coloration, to match the approximate color of the surface of the wooden pole on which they are attached.

(e) Panel antennas shall not be mounted on the side of a pole more than 12 inches from the surface of the wooden pole, measured from the exterior surface of the pole to the furthest extent of the panel antenna.

(f) Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole; provided, that each antenna enclosure shall not be more than three cubic feet in volume, with a cumulative total antenna volume not to exceed 12 cubic feet.

(g) In addition to the increased antenna height allowed in subsection (b) above, a canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection (3)(a) of this section. A canister antenna mounted on the top of a wooden pole shall not exceed 16 inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side-mounted canister antenna, so long as the inside edge of the antenna is no more than 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.

(h) In addition to the increased antenna height allowed in subsection (b) above, an omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four 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.

(i) 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 inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

(j) Equipment for small cell facilities must be attached to the wooden pole, unless otherwise permitted to be ground-mounted pursuant to subsection (1) of this section. The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure may not exceed 17 cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and do not cumulatively exceed 17 cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole if such banners or road signs are allowed by the pole owner.

(k) The visual effect of the small cell facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent reasonably possible.

(l) The use of the wooden pole for the siting of a small cell 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 cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

(m) All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored, powder coated, or other permanent coloration, to match the pole. The number and size of conduits shall be minimized to the number technically necessary to accommodate the small cell.

(4) Small Cell Facilities Attached to Existing Buildings. Small cell facilities attached to existing buildings shall conform to the following design criteria:

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

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

(c) New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if they complement the architecture of the existing building.

(d) Small cells shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.

(e) 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.

(f) Small cell facilities shall be painted and textured to match the adjacent building surfaces.

(5) Small cell facilities mounted on cables strung between utility poles shall conform to the following standards:

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

(b) Only one strand-mounted facility is permitted per cable between any two existing poles;

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

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

(e) Ground-mounted equipment to accommodate such strand-mounted facilities is not permitted, except when placed in preexisting equipment cabinets;

(f) Pole-mounted equipment for strand-mounted facilities shall meet the requirements for pole-mounted small cells; and

(g) Such strand-mounted devices must be installed to cause the least visual impact and with the minimum exterior cabling or wires (other than the original strand) necessary to meet the technological needs of the facility.

(6) New Poles in the Rights-of-Way for Small Cell Facilities.

(a) New poles within the rights-of-way are only permitted if the applicant can establish that:

(i) The proposed small cell facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower or in or on a nonresidential use in a Residential Zone whether by roof or panel-mount or separate structure;

(ii) The proposed wireless communications facility receives approval for a concealment plan, as described in subsection (7) of this section;

(iii) The proposed wireless communications facility also complies with the Shoreline Master Program and SEPA, if applicable; and

(iv) No new poles shall be located in a critical area or associated buffer required by the City's critical areas ordinance, except when determined to be exempt pursuant to said ordinance.

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

(a) The concealment plan shall seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure shall have similar designs to existing neighboring poles in the rights-of-way, including to the extent technically feasible similar height. 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 or otherwise integrated into the design of the structure. Use of a unified enclosure equal to or less than four cubic feet in volume may be permitted in meeting these criteria. This requirement shall be applied in a manner which does not dictate the technology employed by the service provider nor unreasonably impair the technological performance of the equipment chosen by the service provider.

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

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

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19.15.030 Land use review types.

There are four categories of land use review that occur under the provisions of the development code.

A. *Type I.* Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.

B. *Type II.* Type II reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that public notification shall be issued for Type II decisions.

C. *Type III.* Type III reviews require the exercise of discretion about nontechnical issues.

D. *Type IV.* Type IV reviews require discretion and may be actions of broad public interest. Decisions on Type IV reviews are only taken after an open record hearing.

E. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.

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Table A. Land Use Review Type

Type I	Type II	Type III	Type IV
• Home business • Seasonal development limitation waiver • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination	• Modified wireless communication facilities (6409 per 47 CFR 1.40001) • Lot line revision • Setback deviations • Final plat[2],[3] • Code official design review • Accessory dwelling unit	• New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical areas determination (wetland/watercourse buffer averaging/reduction • Temporary encampment[4]	• Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking variances (reviewed by design commission)

Type I	Type II	Type III	Type IV
• Tenant improvement/change of use • Shoreline exemption[1] • Critical areas determination (steep slope alteration) • Final short plat • Temporary commerce on public property • Site development permits • Transportation concurrency certificate	• Parking variances (reviewed by city engineer) • Small cell deployment	• Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit • Shoreline substantial development permit[1] • Shoreline revision (substantial development)[1]	• Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP)[5] • Shoreline variance[5] • Shoreline revision (variance and SCUP)

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19.16.010 Definitions.

Words used in the singular include the plural and the plural the singular.

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Pole Extender: An object affixed between a utility pole and pole top mounted equipment (e.g. a small cell antenna) for the purpose of increasing the height of the pole top mounted equipment above the pole.

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Regulated Improvements: Any development of any property within the city, except:

1. Property owned or controlled by the city; or

2. Single-family dwellings and the buildings, structures and uses accessory thereto; ~~or~~

3. Wireless communications structures, including associated support structures and equipment cabinets; or~~.~~

4. Small cell facilities or small cell networks.

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Small cell deployment: The construction and installation of either small cell facilities, small cell networks, or both small cell facilities and small cell networks, together with the installation of the fiber network supporting the small cell facility and small cell network.

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"Small cell facility" and "small cell network" are defined in accordance with RCW 80.36.375.

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"Small cell" shall mean "small cell facility".

...

Undergrounded Utility Areas: A geographic area where utilities that are commonly located aboveground (e.g. electrical power, cable and telephone lines, etc.) have been placed entirely underground, and associated support structures (e.g. wooden utility poles or guy poles) have been removed.

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Utilities: Facilities providing infrastructure services by a public utility or private utility regulated by the state through fixed wires, pipes, or lines. Such facilities may include water, sewer, storm water facilities (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication lines, cable communication lines, electrical lines and other appurtenances associated with these utilities. "Utilities" does not include wireless communication facilities, but do include small cell facilities.

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Wireless Communications:

1. Attached Wireless Communications Facility (Attached WCF): An antenna array that is attached to an existing building or structure, including utility poles, with any accompanying attachment structure, transmission cables, and an equipment cabinet which may be located either inside or outside of the attachment building or structure.

2. Wireless Communications Antenna Array (Antenna Array): One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).

3. Wireless Communications Facility (WCF): Any unstaffed facility for the transmission and/or reception of radio frequency signals usually consisting of antennas, an equipment cabinet, transmission cables, and a support structure to achieve the necessary elevation.

4. Wireless Communications Support Structure (Support Structure): A structure designed and constructed specifically to support an antenna array, and may include a monopole tower, lattice tower, guy-wire support tower or other similar structures. Any structure which is used to attach an attached WCF to an existing building or structure (hereinafter "attachment structure") shall be excluded from the definition of and regulations applicable to support structures.

5. Wireless Communications do not include small cells for the purposes of Title 19 MICC.