ORDINANCE NO. 751

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING THE TITLE OF CHAPTER 23.45 TELECOMMUNICATIONS AND SECTION 23.45.020 DEFINITIONS, ADDING CHAPTER 23.50 SMALL CELL COMMUNICATION FACILITIES AND CHAPTER 23.55 ELIGIBLE FACILITY REQUESTS

WHEREAS, the City's first Telecommunication Ordinance was adopted in 2002 following the adoption of the Telecommunications Act of 1996 completely updating the Communications Act of 1934. The Telecommunications Act of 1996 set federal regulations for the siting of macro personal wireless communication services, among other things; and

WHEREAS, Section 704 of the Federal Telecommunications Act of I996, 47 USC Sec. 332(c)(7), provides that local governments may, pursuant to their inherent zoning authority, regulate the placement, construction, and modification of personal wireless telecommunications service facilities, provided that the local governments do not unreasonably discriminate among providers of functionally equivalent services, or prohibit or have the effect of prohibiting the provision of personal wireless services; and,

WHEREAS, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), as interpreted by the FCC's Acceleration of Broadband Deployment Report and Order, and 47 CFR §1.6100, requires a state or local government to approve any eligible facility request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station; and

WHEREAS, on October 17, 2014, the Federal Communications Commission (FCC) adopted a Report and Order titled "Acceleration of Broadband Deployment, Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; and

WHEREAS, Title 23 of the University Place Municipal Code - Telecommunications required an update to comply with the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), and the FCC Report and Order titled "Acceleration of Broadband Deployment, Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; and

WHEREAS, on December 8, 2020, the City Council adopted Resolution 939, approving the 2021 Planning Commission Workplan which includes recommending amendments to Title 23 to make the Municipal Code consistent with the Spectrum Act and provide regulations for the deployment of small cell wireless technology; and

WHEREAS, the Planning Commission studied proposed amendment to Title 23, Chapter 23.45, Macro Wireless Communication Facilities, and new Chapters 23.50 Small Cell Communication Facilities and 23.55 Eligible Facility Requests on January 6, and 13, February 3, and March 3 and held a public hearing on April 7, 2021, before making a unanimous recommendation to the City Council; and

WHEREAS, the City issued a Determination of Nonsignificance (DNS) on May 7, 2021 and published notice of the issuance in the Tacoma News Tribune and received no comments or appeals; and

WHEREAS, the City Council studied the recommended amendment during their regular City Council meetings on May 3, 2021, and June 7, 2021; and

WHEREAS, the City Council finds the amendments to Title 23 meet the requirements of is in the process of and will continue to identify potential sites which will allow for the placement of personal wireless telecommunications facilities subject to the criteria enumerated herein and elsewhere in City ordinances; and

WHEREAS, the City has established a legislative record including numerous examples of wireless ordinances from other jurisdictions, and involved both the public and personal wireless telecommunication service providers in drafting the text of this ordinance; and

WHEREAS, the City of University Place is in the process of codification of City Ordinances and for ease of integration into a codified form the City Council has determined to adopt these telecommunications provisions as a separate unnumbered Title; and

WHEREAS, zoning districts in the City are currently classified as set forth in Section 22.25.030(E)(1-3) Legislative Amendments;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DO ORDAIN AS FOLLOWS:

- Section 1. <u>Amendments to Chapter 23.45</u>. Amending the title of 23.45 and 23.45.020 Definitions only and leaving the remainder of 23.45 in place as attached as Exhibit A.
- Section 2. Adding Chapter 23.50 Small Cell Communication Facilities. A new Chapter 23.50 of the University Place Municipal Code is created as set forth in Exhibit B.
- Section 3. Adding Chapter 23.55 Eligible Facility Requests. A new Chapter 23.55 of the University Place Municipal Code is created as set forth in Exhibit C.
- Section 4. <u>Severability</u>. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.
- Section 5. <u>Effective Date</u>. This Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

PASSED BY THE CITY COUNCIL ON JUNE 7, 2021.

Caroline Belleci, Mayor

ATTEST:

Emelita J. Genetia, City Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

Date of Publication: 06/09/21 Effective Date: 06/14/21

EXHIBIT A

MACRO WIRELESS COMMUNICATIONS FACILITIES FOR PERSONS AND GOVERNMENT

Sections:

| 23.45.010 Purpose. |
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|--------------------|

23.45.020 Definitions.

23.45.030 Exemptions.

23.45.040 Policy statement.

23.45.050 Application of this chapter to wireless facilities for governmental entities.

23.45.060 Recognition of industry site selection criteria.

23.45.070 Site selection criteria.

23.45.080 Priority of locations.

23.45.090 Siting priority on public property.

23.45.100 Required submittals and testing.

23.45.110 Co-location.

23.45.120 Design criteria.

23.45.130 Permits required.

23.45.140 Inspection requirements.

23.45.160 Non-use/abandonment.

23.45.170 Third party review.

23.45.180 Penalties and enforcement.

23.45.010 Purpose.

A. These standards were developed to protect the public health, safety, and welfare, to protect property values and minimize visual impact while furthering the development of enhanced telecommunications services in the City and providing for wireless communications necessary for governmental purposes. These standards were designed to comply with the Telecommunications Act of 1996. The provisions of this title are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This title shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

B. To the extent that any provision of this title is inconsistent or conflicts with any other City ordinance, this title shall control. Otherwise, this title shall be construed consistently with the other provisions and regulations of the City.

C. In reviewing any application to provide personal wireless service, to install personal wireless service facilities or to provide for wireless facilities necessary for governmental purposes, the City shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The City shall approve, approve with condition, or deny the application in accordance with the time frames set forth in UPMC Title 22, Administration of Development Regulations, and in accordance with other applicable ordinances.

(Ord. 360 § 1, 2002).

23.45.020 **Definitions.**

For the purpose of this title, the following terms shall have the meaning ascribed to them below:

- "Abandonment" means: (1) to cease operation for a period of 60 or more consecutive days; (2) to reduce the effective radiated power of an antenna by 75 percent for 60 or more consecutive days; (3) to relocate an antenna at a point less than 80 percent of the height of an antenna support structure; or (4) to reduce the number of transmissions from an antenna by 75 percent for 60 or more consecutive days.
- "Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet, or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular," "enhanced specialized mobile radio" and "personal communications services," telecommunications services, and its attendant base station. For purposes of this definition, the term "antenna" does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15. Types of antenna(s) include, but are not limited to:
- (a) "Directional antenna" (also known as "panel" antenna) means an antenna which transmits and receives radio-frequency signals in a specific directional pattern of less than 360 degrees.
- (b) "Omnidirectional antenna" (also known as a "whip" antenna) means an antenna which transmits and receives radio-frequency signals in a 360-degree radial pattern.
- (c) "Parabolic antenna" (also known as a "dish" antenna) means an antenna which is a bowl-shaped device for the reception and/or transmission of radio-frequency communication signals in a specific directional pattern.
- (d) "Stealth antenna" means an antenna installed inside a non-antenna structure or camouflaged to appear as a non-antenna structure.
- (e) "Canister antenna" means an antenna installed inside a canister.
- "Antenna height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
- "Antenna support structure" means any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.
- "Applicant" means any provider or any person, partnership, or company who files an application for any permit necessary to install, maintain, or remove a personal wireless service facility within the City.

"Balloon test" means a test for a reasonable period of time, not less than three consecutive workdays, whereby a balloon of sufficient size to replicate the size of the top of a proposed tower and antenna array is tethered to the ground at the location of the proposed base for a pending new tower application and the balloon is suspended at the height that replicates the height of the proposed tower and antenna array. No trees shall be removed to conduct the balloon test.

"Base station" means a structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower. Base station includes, without limitation:

- (a) Equipment associated with wireless communications services such as private, broadcast, and public safety 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 and small-cell networks).
- (c) Any structure other than a tower that, at the time the relevant application is filed with the City under this definition, supports or houses equipment described in paragraphs (a) or b) of this definition 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 such support. The term does not include any structure that, at the time the relevant application is filed with the City under 23.55, does not support or house equipment described in paragraphs (a) and (b) of this definition.

"Camouflaged" means a personal wireless service facility that is disguised, hidden, or integrated with an existing structure that is not a monopole or tower, or a personal wireless service facility that is placed within an existing or proposed structure, or new structure, tower, or mount within trees so as to be significantly screened from view.

"Cell site" or "site" means a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

"City center area" means a circular area extending 700 feet in radius from the center of the intersection of 40th Street West and Bridgeport Way West, together with a rectangular area extending 450 feet east and west from the centerline of Bridgeport Way between 35th Street West and 44th Street West.

"Co-location" means the use of a personal wireless service facility or cell site by more than one personal wireless service provider.

"Conditional use permit" or "CUP" means a process and approval as described in UPMC Title 22, Administration of Development Regulations, and in UPMC Title 19, Zoning.

"COW" means "cell on wheels."

- "Design" means the appearance of personal wireless service facilities, including such features as their materials, colors, and shape.
- "Director" is the planning and development services director.
- "Disrepair" as used in this chapter refers to a facility or structure which has become so damaged or deteriorated on account of age, the elements, wear and tear, or other cause, that it has become a threat to public safety or would constitute a public nuisance as defined in the University Place Municipal Code.
- "EIA" means the Electronics Industry Association.
- "Eligible facilities request" means any request for facility modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station that involves:
- 1. Co-location of new transmission equipment;
- 2. Removal of transmission equipment; or
- 3. Replacement of transmission equipment.
- "Equipment enclosure" means a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning, backup power supplies and emergency generators.
- "FAA" means the Federal Aviation Administration.
- "Facility" for the purposes of this chapter, means an unstaffed site containing structural improvements for the transmission and reception of low-power radio signals consisting of antennas, support structure, equipment shelters or cabinet, or related equipment.
- "Facility modification" means any modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.
- "FCC" means the Federal Communications Commission.
- "Governing authority" means the City Council of the City of University Place.
- "Governmental entity" means the State of Washington, Pierce County, the City, municipally owned utilities, and special purpose districts including the school, fire, and library districts.
- "Hearings Examiner" means the duly appointed Hearings Examiner of the City.
- "Modification" means the changing of any portion of a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design.
- "Mount" means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts:

- 1. Building Mounted. A personal wireless service facility mount fixed to the roof or side of a building.
- 2. Ground Mounted. A personal wireless service facility mount fixed to the ground, such as a tower.
- 3. Structure Mounted. A personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.
- "Personal wireless service," "personal wireless service facilities," and "facilities" used in this title shall be defined in the same manner as in 47 U.S.C. 332(c)(7)(C), as they may be amended now or in the future, and include facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.
- "Pole extender" means an object affixed between the utility pole and the antenna for the purpose of increasing the height of the antenna above the pole.
- "Related equipment" means all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, radio, cable, conduit, and connectors.
- "Provider" means every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual that provides personal wireless service over personal wireless service facilities.
- "Screening" means a personal wireless telecommunications facility such as a tower or mount placed amongst and adjacent to (within 20 feet) three or more trees at least 75 percent of the height of the facility.
- "Secondary use" means a use subordinate to the principal use of the property, such as commercial, residential, utilities, etc.
- "Security barrier" means a wall, fence, or berm that has the purpose of sealing a personal wireless service facility from unauthorized entry or trespass.
- "Small cell facilities" are defined as small wireless facilities that meet each of the following conditions:

The facilities:

Are mounted on structures 50 feet or less in height including their antennas.

Are mounted on structures no more than 10 percent taller than other adjacent structures.

Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than 28 cubic feet in volume.

The facilities do not result in human exposure to radio-frequency radiation in excess of the applicable safety standards as specified by the FCC.

- "Small cell network" shall mean and refer to a collection of interrelated small cell facilities designed to deliver personal wireless services.
- "Structure" for the purposes of this section means a pole, tower, base station, or other building, whether it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services).
- "Substantially change" means to increase the height of an existing wireless tower by more than 10 percent, or by a height exceeding 20 feet, whichever is greater.
- "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.
- "Technical Review Committee Meeting" is a meeting with City staff to review a proposal with an applicant prior to application submittal.
- "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.
- "Underground Area" means any area of the City where power, phone and telecommunication cables are located underground rather than on utility poles.
- "Utility poles" shall mean a structure designed and used primarily for the support of electrical wires, telephone wires, and television cable.
- "Unlicensed wireless services" means commercial mobile services that operate on public frequencies and do not need an FCC license.

EXHIBIT B



Chapter 23.50

SMALL WIRELESS COMMUNICATIONS FACILITIES

| Sections: | |
|-----------|--|
| 23.50.010 | Purpose. |
| 23.50.020 | Franchise application. |
| 23.50.030 | Right-of-way permits for small cell deployment. |
| 23.50.040 | Liability insurance. |
| 23.50.050 | Definitions. |
| 23.50.060 | Application. |
| 23.50.070 | Application review process. |
| 23.50.080 | Application withdrawal. |
| 23.50.090 | Permit requirements. |
| 23.50.100 | Modifications. |
| 23.50.110 | Design zones. |
| 23.50.120 | General requirements. |
| 23.50.130 | Wooden utility pole design standards. |
| 23.50.140 | Small cell facilities located on non-wooden utility pole |
| 23.50.160 | Small cell facilities attached to existing buildings. |
| 23.50.170 | Strand mounted small cell facilities. |
| 23.50.180 | Design areas standards. |
| 23.50.190 | Removal |

23.50.010 Purpose.

The purpose of this Chapter is to manage the city's rights-of-way during the deployment of Distributed Antenna System networks throughout the city in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment while complying with the requirements of state and federal law. Small cell facilities are permitted in all zoning districts in the city, subject to the following special requirements and performance standards. Except for 23.45.020 Definitions, Chapter 23.45 UPMC shall not apply to small cell facilities. The application and records process described in Chapter 23.45 UPMC shall not apply to the processing of small cell permit applications.

23.50.020 Franchise application.

Applicants for a small cell facility franchise shall apply using the City's franchise application form and submit a fee according to the City fee schedule. The Director of Planning and Development Services is charged with administration of small cell deployments and other wireless communication review processes established under this chapter. All franchise applications shall designate the entire City right-of-way as the franchise boundary. Small cell facility franchises shall comply with all provisions of Chapter 23.20 UPMC Franchise excluding the timeframes for issuance under 23.20.030 UPMC. Small cell facility franchises shall be issued as provided herein.

23.50.030 Right-of-way permits for small cell deployment.

The rights granted under the franchise are implemented through the issuance of right-of-way permits. The franchise application may be accompanied by one or more applications for a right-of-way permit to deploy small cells. An initial franchise and all related right-of-way permit applications shall be processed concurrently.

A. Administrative review of a small cell right of way permit may occur in parallel with the franchise agreement approval process; provided, however, that the small cell permit will not be issued until the applicant receives a franchise agreement with the City.

23.50.040 Liability insurance.

<u>Liability insurance naming the City of University Place as an additional insured, in amounts the City Manager shall determine are sufficient to provide protection for the City, but not less than \$1,000,000.00.</u>

23.50.050 Definitions (See 23.45 for definitions applicable to this Section.

23.50.060 Application.

- A. The following information shall be provided by all applicants for a small wireless facility permit:
 - 1. Specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, or replacement or new Pedestrian Poles, existing buildings and/or other structures outside the right-of-way. 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.
 - 2. The application shall have sufficient detail to identify:
 - i. The location horizontally and vertically of all overhead and underground utilities, telecommunication, cable, water, adjacent lighting, sewer drainage and other lines and equipment within fifty (50) feet of the proposed project area (which 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 fifty (50) feet of the proposed project area.
 - ii. The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.
 - 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 and any other ancillary equipment or construction necessary to construct the small cell 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 will 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 cell facility.

- 4. Compliance with the aesthetic requirements of this Chapter.
- 5. The applicant must show written approval from the owner of any pole or structure for the installation of its small cell facilities on such pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards from the pole owner, unless the pole owner is the city. Submission of the lease agreement between the owner and the applicant is not required. For city-owned poles or structures, the applicant must obtain a lease from the city prior to or concurrent with the small cell 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.
- 6. If the site location includes a new replacement light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk within one hundred fifty (150) feet of the existing light.
- 7. Any application for a small wireless facility located in the right-of-way adjacent to a parcel zoned for residential use shall demonstrate that the applicant has evaluated the following:
 - i. Whether a small wireless facility is currently installed on an existing pole in front of the same residential parcel. If a small wireless facility exists, then the applicant must demonstrate that no technically feasible alternative location exists which is not in front of the same residential parcel.
 - ii. 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. The applicant must demonstrate that no technically feasible alternative location exists which is not directly in front of a window or views.
- 8. Any application for a small cell permit which contains an element which is not exempt from SEPA review shall submit an environmental checklist under Chapter 43.21C RCW and Chapter 17.40 UPMC. Further, any application proposing small cell facilities in shoreline management zones (Title 18 UPMC) or in critical areas (Title 17. UPMC) must indicate that the application is exempt or complies with the review processes in such codes.
- 9. The applicant shall submit a sworn affidavit signed by an RF engineer with knowledge of the proposed project affirming that the small cell deployment 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 cell facility will operate. If additional transmission facilities necessary to the small cell facility, such as microwave backhaul, are to be provided by a third party, then the small cell permit shall be conditioned on an RF certification showing the cumulative impact of the RF emissions of the entire installation. The applicant may provide one emissions report for the entire small cell deployment if the applicant is using the same small cell facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.
- 10. The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

- 11. A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that the construction plans of the small cell facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads or, in the case of a utility-owned structure, provide written confirmation that the pole will support the additional loads.
- 12. A right-of-way permit as required by Chapter 13.05.530 UPMC including a traffic control plan and information for right-of-way obstruction permit. If located in a residential zone the city shall provide public notice in accordance with Section 22.05.060 (A)(1) and (B) UPMC.
- 13. Proof of a valid University Place business license.
- 14. An email contact and telephone number for public comment as provided.
- 15. Applicants shall submit a traffic control plan and information for right-of-way obstruction permit.
- 16. 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.
- 17. Recognizing that small cell 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.

23.50.070 Application Review Process

A Technical Review Committee (TRC) meeting is encouraged prior to applying for a small cell permit. The purpose of a TRC meeting is to discuss the nature of the proposed deployment of the small cell network, review process and schedule, and applicable plans, policies and regulations.

- A. Applications filed under this Chapter shall be numbered consecutively in the order of their filing and shall become a part of the official records of the City. Copies of all notices, application materials, staff reports, and actions shall state the file number and be filed with the application.
- B. The City shall make reasonable efforts to issue the small cell permit in a time period that adheres to the presumptively reasonable periods of time set by the FCC and also consistent with any conflicting provisions of state or federal law, and the preservation of the city's health, safety and aesthetic environment.
- C. Administrative review of a small cell permit may occur in parallel with the lease process: provided. however, that the small cell permit will not be issued until the applicant is granted a lease.
- D. The applicant can batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.
- E. Up to twenty sites may be specified in one right-of-way permit application for processing. At the discretion of the Director, up to five additional sites may be included in order to consider small cell sites within one service area in one application.
- F. Issuance of a right-of-way permit to install a small cell deployment shall be contingent upon approval of a franchise or the possession of a valid franchise.

- G. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC Section 253 and 47 USC Section 332 and applicable case law. Applicants for franchises and the right-of-way permits which implement the franchise shall be treated in a competitively neutral and nondiscriminatory 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. Franchise and right-of-way permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.
- H. Any applicant may revise an application. Such revision shall be deemed to supersede the prior application documents. If such revision is significant enough to require a revised administrative review, the director may assess another application fee equal to the amount required to review that application.
- 1. Failure of an applicant to provide additional information as requested within 60 days of notice by the Director shall be deemed a withdrawal of that application unless an extension period has been approved by the Director.
- J. The Director shall use the criteria listed below when deciding upon the application. In addition, the Director may approve the application only if:
 - 1. It is consistent with this section and the comprehensive plan; and
 - 2. It is consistent with the purpose and intent of the zone in which the site is located: and
 - 3. It is consistent with the public health, safety and welfare.
- K. The Director shall approve, approve with conditions or modifications, or deny an application. The Director shall include any conditions to ensure consistency with City zoning and utility regulations, and may include mitigation measures proposed under SEPA, if applicable. The denial of one or more small cell facility locations within a batched submission shall not be the sole basis for a denial of other locations or the entire application for small cell facilities.
- L. The applicant carries the burden of proof that a preponderance of the evidence supports approval of the application or approval with conditions or modifications.
- M. Administrative review decisions (and any reconsideration of that decision) and SEPA threshold determinations are final decisions, effective on the day issued. The Director's decision is the City's final decision on the application and is not subject to administrative appeals.
- N. Appeal to Superior Court. A final decision by the Director may be appealed to Superior Court.

23.50.080 Application Withdrawal.

A. Any applicant may withdraw an application 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 proper 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. These City costs shall be based upon a determination by the

Director of the total hours expended in project review from the time of project application to time of withdrawal, utilizing an hourly dollar amount for staff time as established by resolution. 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.

23.50.090 Permit Requirements

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

- A. Post-Construction As-Builts. Within thirty (30) days after construction of the small wireless facility, the grantee shall provide the City with as-builts of the small wireless facilities demonstrating compliance with the permit and site photographs.
- B. Construction of the small cell facility must be completed within 12 months after the approval date by the City. The grantee may request one extension, to be limited to six months, if the applicant cannot construct the small cell facility within the original 12-month period.
- C. The grantee must maintain the small cell facilities in safe and working condition. The grantee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.
- D. The grantee shall commence operation of the small cell facility no later than three months after installation, which may be extended for an additional three months upon the applicant's request for additional time due to matters beyond its reasonable control.
- E. Construction in City Rights-Of-Way shall comply with 23.35 UPMC.

23.50.100 Modifications

- A. Modification to Small Cell Facilities. If a grantee desires to make a modification to an existing small cell facility, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a new small cell permit.
- B. Concealment Design Retained. The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded when the modification does not defeat the concealment elements of the small wireless facility.
- C. A small cell permit shall not be required for routine maintenance and repair of a small cell facility, 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 cell facility, does not impact the structural integrity of the pole, and does not require pole replacement. As used in this section, "similar size, weight, and height" shall mean no more than a 10 percent increase in any dimension. Further, a small cell facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small cell facility. Right-of-way use permits may be required for such routine maintenance, repair or replacement consistent with 13.05.530 UPMC.

23.50.110 Design Zones (Underground Areas)

- A. The following zones are designated as design zones for the purpose of siting small wireless facilities:
 - 1. All City-owned parks within the City.
 - 2. Underground Areas.
- B. The City discourages the use of pedestrian poles for small wireless facilities in design areas.
- C. Any applicant who desires to place a small wireless facility in a design zone must first demonstrate that the applicant cannot locate the small wireless facility outside of the design zone. Applications for new 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 five hundred (500) feet of the proposed site and outside of the design zone.
- D. Applications for small wireless facilities within design zones or on pedestrian poles are subject to approval by the Director and must comply with a Concealment Plan, described in 23.50 UPMC.

23.50.120 General Requirements

- 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 the applicant builds an underground vault it should design such vault to allow for co-location of additional equipment. If ground-mounted equipment is necessary, then the applicant shall submit a Concealment Plan, as described in 23.50.170(3) UPMC. Generators located in the rights-of-way are prohibited.
- B. No equipment shall be operated so as to produce noise in violation of Chapter 9.05 UPMC (Noise Control).
- 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. 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.
- E. The design approved in a small cell permit shall be considered concealment elements and such facilities may only be expanded upon an eligible facilities request described in this Title when the modification does not defeat the concealment elements of the small cell facility.
- 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 approved security reasons or required by a federal or state authority.
- H. Antennas and equipment enclosures placed on side arm mounts must comply with the requirements in 23.50.130(1) UPMC of this section and may not be placed on any preexisting side arm mount that extends over the vehicular portion of the rights-of-way.
- I. Any small cell facility shall be removed by the facility owner or authorized agent within six months of the date it ceases to be operational or if the facility falls into disrepair. "Disrepair," as used in this section, refers to a facility or structure which has become so damaged or deteriorated on account of age, the elements, wear and tear, or other cause that it has become a threat to public safety or would constitute a public nuisance as defined in the University Place Municipal Code.
- J. The preferred location of a small cell facility on a pole is the location with the least visible impact.
- K. Antennas, equipment enclosures, and ancillary equipment, conduit and cable shall not dominate the building or pole upon which they are attached.
- L. The City may consider the cumulative visual effects of small cells mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the city.
- M. Small cell 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.
- N. The design standards in this section 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, nor prohibits or has the effect of prohibiting the provision of personal wireless services.

23.50.130 Wooden Utility Pole Design Standards.

- A. Small cell facilities located on wooden utility poles shall conform to the following design criteria:
 - 1. Co-location. Except in Design Areas, co-locations on existing structures are the only allowable installations when locating wireless communication antennas and related facilities in the Public Rights-of-Way: provided however, that ground mounted equipment is permitted in accordance with Section 23.50.120(A) UPMC.
 - Antennas attached to existing structures. Antennas may be attached to existing utility poles. Such
 installations shall not be approved on Public Rights-of-Way in areas zoned R-1, or R-2, except
 immediately adjacent to public or quasi-public uses.
 - 3. The utility 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.
 - 4. 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.

- 5. 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.
- 6. 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 utility pole on which they are attached.
- 7. Multiple antennas are permitted on a utility 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. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness.
- 8. Panel antennas shall not be mounted more than 12 inches from the surface of the utility pole.
- 9. A canister antenna may be mounted on top of a utility pole, which may not exceed the height requirements described in subsection (5) of this section. A canister antenna mounted on the top of a utility pole shall not exceed the diameter of the pole by more than 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 12 inches from the surface of the utility pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the utility pole.
- 10. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.
- 11. An omnidirectional antenna may be mounted on the top of an existing utility 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.
- 12. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on utility 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.
- 13. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground-mounted pursuant to 23.50.120(A) UPMC. The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any preexisting associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and do not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole: provided, that such location does not interfere with the operation of the banners or signs.

- 14. An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so; provided, that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole (including but not limited to any conduit, disconnect switches and meters), including wireless equipment associated with the antenna and any preexisting associated equipment on the pole, does not exceed 28 cubic feet. The unified enclosure may not be placed more than six inches from the surface of the pole unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind road signs: provided, that such location does not interfere with the operation of the road signs or the small cell facility.
- 15. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.
- 16. The visual effect of the small cell facility on all other aspects of the appearance of the utility pole shall be minimized to the greatest extent possible.
- 17. The use of the utility pole for the siting of a small cell facility shall be considered secondary to the primary function of the utility pole. If the primary function of a utility pole serving as the host site for a small cell facility becomes unnecessary, the utility 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.
- 18. 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 conduits shall be minimized to the number technically necessary to accommodate the small cell.

23.50.140 Small Cell Facilities located on non-wooden utility poles

- A. Small cell facilities attached to existing or replacement non-wooden utility poles in the right-of-way or poles outside of the right-of-way shall conform to the following design criteria:
 - Co-location. Except in Design Areas co-locations on existing structures are the only allowable installations when locating wireless communication antennas and related facilities in the Public Rights-of-Way; provided however, that ground mounted equipment is permitted in accordance with Section 23.50.120(A) UPMC.
 - 2. Antennas and the associated equipment enclosures shall be fully concealed within the utility pole, unless such concealment is otherwise technically infeasible or is incompatible with the utility pole design: then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the utility pole or flush-mounted (no more than six inches off the utility pole) to the utility pole in a manner that integrates the equipment enclosure into the design of the utility pole and minimizes clutter and visual impact. If the equipment enclosure is permitted on the exterior of the utility pole, the applicant is encouraged to place the equipment enclosure behind any road signs that may be on the utility pole: provided, that such location does not interfere with the visibility of the signs or the operation of the small cell facility. For purposes of this section, "incompatible with the utility pole design" may include a demonstration by the applicant that the visual impact to the utility pole or the streetscape would be reduced by placing the antennas and equipment exterior to the utility pole.

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

23.50.150 Small Cell Facilities Attached to Existing Buildings

- A. Small cell facilities attached to existing buildings shall conform to the following design criteria:
 - 1. Small cell facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
 - 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 they complement the architecture of the existing building.
 - 4. Small cells shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
 - Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
 - 6. Small cell facilities shall be painted and textured to match the adjacent building surfaces.
 - 7. Antenna and or equipment shall not exceed 10' above roof line.
 - 8. Feed lines and coaxial cables shall be located below the parapet of the rooftop.
 - 9. If a cabinet enclosure cannot be located within the building where the wireless service 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 (F)(1) of this section.

23.50.160 Strand Mounted Small Cell Facilities

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 three (3) cubic feet in volume.

- 2. Only one (1) strand-mounted facility is permitted between any two (2) existing poles.
- 3. 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 distance is technically necessary or is required by the pole owner for safety clearance.
- 4. No strand-mounted device shall be in or above the portion of the roadway open to vehicular traffic.
- 5. Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in preexisting equipment cabinets: and
- 6. Pole-mounted equipment shall comply with the requirements of 23.50.130.
- 7. Such strand-mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).
- 8. Strand-mounted facilities are only permitted on poles that have existing overhead wirelines.

23.50.170 Design Areas Standards

- A. Small Cell Facilities in Design Areas. Small cell facilities attached to existing, replacement or new poles of any type in the right-of-way or poles outside of the right-of-way shall conform to the following design criteria:
 - 1. The City at its sole discretion may allow the attachment of a small cell facility to City owned light poles and traffic control equipment.
 - 2. The applicant shall submit a concealment plan including the design of any screening, fencing or other concealment technology for a tower, 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.
 - 3. The concealment plan shall seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure should 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. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to subsection (7) of this section.
 - 4. If the Director 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 element design, unless it can

- show that such concealment element design is not physically or technically feasible, or that such deployment would overwhelm the pole design.
- 5. Antennas and the associated equipment enclosures shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible or is incompatible with the pole design; then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush-mounted (no more than six inches off the pole) to the pole in a manner that integrates the equipment enclosure into the design of the pole and minimizes clutter and visual impact. If the equipment enclosure is permitted on the exterior of the pole, the applicant is encouraged to place the equipment enclosure behind any road signs that may be on the pole: provided, that such location does not interfere with the visibility of the signs or the operation of the small cell facility. For purposes of this section, "incompatible with the pole design" may include a demonstration by the applicant that the visual impact to the pole or the streetscape would be reduced by placing the antennas and equipment exterior to the pole.
- 6. All conduit, cables, wires and fiber must be routed internally in the light pole. Full concealment of all conduit, cables, wires and fiber is required to be within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.
- 7. 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.
- 8. The height of any replacement pole may not extend more than 10 feet above the height of the existing pole.
- 9. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements, shall not be more than a 25 percent increase in the diameter of the existing pole measured at the base of the pole.
- 10. If additional diameter is needed in order to conceal equipment or conduit within the base of the pole, then the applicant shall propose a concealment plan consistent with section 23.50.170(A)(3) above.
- 11. 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 the diameter of the pole by more than 12 inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antenna shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole, except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.
- 12. The use of the light pole for the siting of a small cell facility shall be considered secondary to the primary function of the light pole. If the primary function of a light pole serving as the host site for a small cell facility becomes unnecessary, the light 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.

23.50.180 Removal.

A. The permits issued herein are for small cell facilities that are in active use only. The applicant, or successor in interest, shall remove any small cell facility including antennas and other equipment within six months of cessation of use.

B. After removal of the facility and all equipment, the applicant, or successor in interest, shall restore any streetlight pole, utility pole, sidewalk, paving, and landscaping to a condition equal to or better than that existing prior to removal.



EXHIBIT C

EXHIBIT C



CHAPTER 23.55 ELIGIBLE FACILITIES REQUESTS

| 23.55.010 | Purpose. |
|-----------|---|
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| 23.55.030 | <u>Definitions</u> |
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23.55.010 Purpose

The purpose of this chapter is to implement Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), as interpreted by the FCC's Acceleration of Broadband Deployment Report and Order, and 47 CFR §1.6100, which require a state or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. For definitions of terms utilized in this chapter, refer to 23.45.020 UPMC.

23.55.020 Applicability

Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and not withstanding any other provisions in the city code, the provisions of this chapter shall be the sole and exclusive procedure for review and approval of a proposed facilities modification which the applicant asserts is subject to review under Section 6409 of the Spectrum Act. To the extent that other provisions of the city code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this chapter shall control.

In the event that any part of an application for project permit approval includes a proposed facilities modification, the proposed facilities modification portion of the application shall be reviewed under the provisions of this chapter. In the event that an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be subject to review under this chapter and may be subject to review under other applicable provisions of the city code.

Nonconforming Structures. This chapter shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming, or legal nonconforming, structure at the time a completed eligible facilities modification application is filed with the city. To the extent that the nonconforming structures and use provisions of the city code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this chapter and shall not apply.

Replacement of Eligible Support Structure. This chapter shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of the tower or base station.

A. First Deployment: Base Station. This chapter shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within or upon, or attached to, the structure.

- B. Interpretation. Interpretations of this chapter shall be guided by Section 6409 of the Spectrum Act; the FCC Eligible Facilities Request Rules, the FCC's report and order in "In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies," WT Docket Nos. 13-238 and 13-32; WC Docket No. 11-59; FCC 14-153; and 23.55.010 (Purpose).
- C. SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible facilities modification application are not subject to, and are exempt from, the requirements of RCW 43.21C.030(2)(c), if:
 - 1. The proposed facilities modification would not increase the height of the eligible support structure by more than 10 percent, or 20 feet, whichever is greater; or
 - 2. The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the structure more than 20 feet, or more than the width of the structure at the level of the appurtenance, whichever is greater; or
 - 3. The authority to condition or deny an application pursuant to Chapter 43.21 RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.
- D. Building Permit. The city will process, review, and, if practicable, issue a decision regarding a building permit for the facility modification concurrent with the eligible facilities modification permit described herein.

23.55.030 Definitions.

See 23.45.020 for definitions applicable to this Chapter.

23.55.040 Permit Required.

An eligible facilities modification permit shall be classified as an administrative permit subject to review and approval or denial by the City.23.55.10 Purpose

23.55.050 Application

Submittal Requirements. A complete eligible facilities modification application shall be deemed complete if it is, in writing, accompanied by the applicable application form and review fee, includes the following required information and submittals, unless waived by the City:

- 1. The following contact information for the applicant:
 - i. Name.
 - ii. Title.
 - iii. Mailing address.
 - iv. Phone number. and
 - v. E-Mail address.
- 2. The legal and dba names, mailing address. Washington tax number, and contact phone number(s) of applicant.
- 3. If a corporation, the name, and address of the registered agent of applicant in Washington State, and the state of incorporation of applicant.

- 4. If applicant is an entity, other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
- 5. An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act.
- 6. If the applicant is not the owner or person in control of the eligible support structure and/or site, the applications shall include an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facilities modification. If the eligible support structure is in a public right-of-way, the applicant must also attest that applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right-of-way.
- 7. A statement from a qualified professional or technician that the modification will be in compliance with FCC radio frequency emission standards.
- 8. If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the application shall include drawings, as-built plans, or the equivalent, showing the height of the eligible support structure. (A) as originally constructed and granted approval by the city or other applicable local zoning authority, or (B) as of the most recent modification that received city, prior to the passage of the Spectrum Act, whichever height is greater.
- 9. A copy of any prior approval (e.g., CUP or AUP) setting forth such preexisting restrictions or requirements together with a certification that the proposed facilities modification conforms to such restrictions or requirements; provided, that such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure.
- 10. The application shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete, and particularly, how concealment or stealth will be extended with the modification. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
- 11. If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, the application shall include drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.
- 12. If the applicant proposes a modification to an eligible support structure that will include any excavation or deployment outside the current site of the tower or base station, would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or would protrude from the edge of a non-tower eligible support structure, the applications shall include a description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the

- boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation and dimensions of the new or replacement transmission equipment. If excavation is proposed, the city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the city, a survey is reasonably necessary to verify the boundaries of the site.
- 13. If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the applications shall include a technical report by a qualified engineer accredited by the state of Washington, demonstrating that the structural enhancement conforms to applicable code requirements. The city may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the sufficiency and accuracy of the report required in this subsection.
- 14. If the applicant proposes a modification to a tower, the applications shall include a stamped report by a state of Washington registered professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation. EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications. The city may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the sufficiency and accuracy of the report required in this subsection.
- 15. If the applicant proposes a modification to a base station, the application shall include a stamped report by a state of Washington registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes.
- 16. If the applicant proposes a modification requiring alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the application shall include a detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating, and depicting:
 - i. The location, elevation, and dimensions of the existing eligible support structure.
- ii. The location, elevation, and dimensions of the existing transmission equipment, including the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment.
- iii. The location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each.
 - Any proposed modification to the eligible support structure.
- v. The location of existing structures on the site, including fencing, screening, trees, and other significant site features; and

- vi. The location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.
- 17. If the eligible facility is in a residential zone the city shall provide public notice in accordance with Section 22.05.060 (A)(1) and (B) UPMC.
- B. Waiver of Submittal Requirement. The city may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the substantial change criteria. A waiver, to be effective, must be in writing and signed by the city.

23.55.060 Determination of Completeness and Tolling

- H.A) When Received. An eligible facilities modification application, and any supplemental submittals, shall be deemed received by the city upon the date such application, or supplemental submittal, is filed with the city. Any application received by the city without payment of the applicable permit review fees will be deemed incomplete.
- a.B) Determination of Completeness. Within 30 days of receipt of the application, the city shall review the application for completeness. An application is complete if it includes the applicable permit review fee(s) and contains all of the applicable submittal requirements set forth in 23.55.050(A) UPMC unless waived by the city pursuant to 23.55.050(B).
- b.C) Incomplete Application. The city shall notify the applicant within 30 days of receipt of the application that the application is incomplete. Such notice shall clearly and specifically delineate all missing documents or information.
- A)D) Tolling Timeframe for Review. The application review period begins to run when the application is received and may be tolled (paused) when the city determines that the application is incomplete and provides notice as set forth below. The application review period may also be tolled by mutual agreement of the city and applicant.
 - i-1) To toll the timeframe for review for incompleteness, the city shall provide written notice to the applicant within 30 days of the date of receipt of the application, specifying all missing documents or information. Such information is limited to submittals set forth in 23.55.050 and any supplemental information requested by the city that is reasonably related to determining whether the proposed facilities modification will substantially change the physical dimension of an eligible support structure.
 - 1)2) The timeframe for review begins running again when the city is in receipt of applicant's supplemental submission in response to the city's notice of incompleteness.
 - Following a supplemental submission, the city shall have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice of incompleteness. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Except as may be otherwise agreed to by the applicant and the city, second or subsequent notices of incompleteness may not specify missing documents or information that was not included in the original notice of incompleteness.

- A notice of incompleteness from the city will be deemed received by the applicant upon the earlier of personal service upon the applicant, delivery by electronic mail to the applicant (if such delivery is authorized for receipt of notice by the applicant), or three days from deposit of the notice in the United States Mail, postage prepaid, and in an envelope properly addressed to the applicant using the address set forth in the application.
- E) Modification of Proposed Facilities Modification. In the event that after submittal of the application, or as a result of any subsequent submittals, an applicant significantly modifies the proposed facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided, that applicant and the city may, in the alternative, enter into a mutually agreeable tolling agreement allowing the city to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- **23.55.070 Review of Application**. The city shall review an eligible facilities modification application to determine if the proposed facilities modification is subject to this chapter, and if so, if the proposed facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.
- B.A. Timeframe for Review. Within 60 days of the date on which the city receives an eligible facilities modification application, less any time period that may be excluded under the tolling provisions of this chapter or a tolling agreement between the applicant and the city, the city shall approve the application and issue an eligible facilities modification permit unless the city determines that the application is not subject to this chapter, or the proposed facilities modification will substantially change the physical dimension of an eligible support structure.
- C.B. Approval Denial. An eligible facilities application shall be approved, and an eligible facilities permit issued, upon determination by the city that the proposed facilities modification is subject to this chapter and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities application shall be denied upon determination by the city that the proposed facilities modification is not subject to this chapter or will substantially change the physical dimensions of an eligible support structure. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the following substantial change criteria:
 - Changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
 - 2. 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 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 feet.
 - 1.3. 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 preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure.

- 1.4. It entails any excavation or deployment outside the current site.
- 2.5. It would defeat the concealment elements of the eligible support structure; or
- (a)6. 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 noncompliant only in a manner that would not exceed the thresholds identified in this section.
- A.C. Approved Application. An application that has been deemed approved shall be and constitute the equivalent of an eligible facilities modification permit, except as may be otherwise determined by a court of competent jurisdiction and shall be subject to generally applicable enforcement and compliance requirements in the same manner as an eligible facilities modification permit issued pursuant to this chapter.
- A.D. Denial of Application. A denial of an eligible facilities modification application shall set forth in writing the reasons for the denial and shall be provided to the applicant.
- E. Other Code Requirements. Any eligible facilities modification permit issued pursuant to this chapter, and any application that has been deemed approved, shall be and is conditioned upon compliance with any applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and safety.
- F. Term of Eligible Facilities Modification Permit. An eligible facilities modification permit issued pursuant to this chapter, and any deemed approve application, shall be valid for a term consistent with the time period provided for building permits in Title 14 UPMC.
- G. Remedies. Notwithstanding any other provisions in the city code, no administrative appeal is provided for review of a decision to condition, deny or approve an application. Applicant and the city retain any and all remedies that are available at law or in equity, including, by way of example and not limitation, those remedies set forth in the FCC Eligible Facilities Request Rules and remedies available under the Land Use Petition Act (Chapter 36.70C RCW). In the event no other time period is provided at law for bringing an action for a remedy, any action challenging a denial of an application or notice of a deemed approved remedy shall be brought within 30 days following the date of denial or following the date of notification of the deemed approved remedy.

23.55.090 Violation and Enforcement

Compliance with the provisions of this chapter is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions set forth in Chapter 1.15. 1.20 and/or 1.30 UPMC at the city's discretion.