

DRAFT

CITY OF _____
WASHINGTON
ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF _____, WASHINGTON, RELATING TO COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS FACILITIES; ADDING A NEW CHAPTER TO THE _____ CODE; ESTABLISHING DEVELOPMENT REGULATIONS FOR COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS TRANSMISSION FACILITIES TO CONFORM TO FEDERAL LAW AND REGULATIONS; ESTABLISHING AN APPLICATION SUBMITTAL AND APPROVAL PROCESS; PROVIDING FOR TERMINATION OF NON-CONFORMING STRUCTURES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the **1996 Act**), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Municipal Code of the City establishing local requirements for the location, construction, and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter "Section 6409") of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the "FCC") to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC, pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (*In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above described proceeding (the "Report and Order" or "Order") clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC's review processes under the National Environmental Policy Act of 1969 ("NEPA") and section 106 of the National Historic Preservation Act of 1966 ("NHPA"), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 - PRACTICE AND PROCEDURE) by adding new

Subpart CC § 1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station (**Eligible Facility Request Rules**); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60 shot clock and tolling provisions, establishes a deemed approved remedy for applications not timely responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Report and Order provides that the Eligible Facility Request Rules will be effective 90 days following publication in the Federal Register; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, the Order is subject to appeal, however, even if an appeal is filed, the appeal will not automatically result in delay of implementation of the Eligible Facility Request Rules; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (RCW Chapter 43.21.C), pursuant to Washington Administrative Code Chapter 197-11, and a determination of Non-Significance (**DNS**) was issued on the ___ day of _____, 20___; and

WHEREAS, in accordance with RCW 36.70A.106 and WAC 365-196-630, a notice of intent to adopt the proposed new development regulations was sent to the State of Washington Department of Commerce and to other state agencies to allow for a 60-day review and comment period, which comment period ended prior to adoption of this ordinance; and

WHEREAS, on the ___ day of _____, 20___ the Planning Commission held a duly noticed public meeting related to the proposed interim development and zoning regulations set forth in the proposed ordinance; and

WHEREAS, the City Council considered the proposed development and zoning regulations on the ___ day of _____, 20___; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order bring the City's development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest;

NOW, THEREFORE, the City Council of the City of _____, Washington, do ordain as follows:

Section 1. New Chapter Added (Eligible Facilities Request). Title **XX** of the _____ (*title of the municipal code being amended*) municipal code is hereby amended by the addition of a new chapter to be known and referred to as Chapter **XX**, Eligible Facilities Modifications, and reading as follows:

Eligible Facilities Modifications

- 010. Title
- 020. Adoption of Findings and Conclusions.
- 030. Purpose and Intent
- 040. Definitions
- 050. Applicability - Relationship to other Rules and Regulations
- 060. Permit Classification
- 070. Application Submittal Requirements
- 080. Review of Application; Approval
- 090. Substantial Change Criteria
- 100. Nonconforming Structure; Termination
- 110. Enforcement

010 Title. This Chapter shall be known and referred to as the "Eligible Facilities Modification Code" or "EFM Code". Unless the context indicates otherwise, a reference herein to "this code" or "this chapter" shall mean and refer to the Eligible Facilities Modification Code.

020. Adoption of Findings and Conclusions. The recitals set forth in the ordinance adopting this code are adopted as findings and conclusions of the City Council.

030. Purpose and Intent. The purpose and intent of this Chapter are to:

A. To implement § 6409 of the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. § 1455(a)) which requires the City to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station;

B. To implement the FCC rules set forth at 47 C.F.R. Part 1 (PART 1 ó PRACTICE AND PROCEDURE) new Subpart CC § 1.40001 (Wireless Facility Modifications), which rules implement § 6409 of the Spectrum Act;

C. To establish procedural requirements and substantive criteria applicable to review and approval or denial of applications for an eligible facilities modification;

D. To ensure that application submittal requirements are related to information reasonably necessary to the determination of whether or not the proposed modification will result in a substantial change in the physical dimensions of the eligible support structure;

E. To exempt facilities modifications approved under this chapter as eligible facilities requests from zoning and development regulations that are inconsistent with or preempted by Section 6409 of the Spectrum Act;

F. To preserve the City's right to continue to enforce and condition approvals under this chapter on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety;

G. To promote timely decisions under this chapter;

H. To ensure that decisions are made consistently and predictably;

I. To incorporate provisions of RCW 43.21C.0384 that exempt eligible facilities modifications from review under RCW 43.21C.030(2)(c), (State Environmental Policy Act);

J. To recognize that Section 6409(a)(1) of the Spectrum Act operates to preempt any provision of the State Environmental Policy Act (RCW Ch. 43.21C) to the extent that any such provision, including RCW 43.21C.030(2)(c), would prohibit a City from approving any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station; and

K. To provide for termination of eligible facilities modifications approved pursuant to this chapter, as nonconforming structures in the event that § 6409(a) of the Spectrum Act is found to be unconstitutional or otherwise determined to be invalid or unenforceable and such modifications would otherwise have been in derogation of development regulations in place at the time of receipt of a completed application.

040. Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter, unless the context clearly requires otherwise. Any term or phrase not defined herein, shall have the meaning that is given to that term or phrase in of the **XX** Municipal Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory and the word "may" is always discretionary. References to governmental entities (whether persons or entities) refer to

those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.

“Approval authority” is the public official, or designee, who has authority under the Code to administratively issue project permit approvals.

“Applicant” shall mean and refer to the person, and such person’s successor in interest, owning and/or operating the transmission equipment proposed in an eligible facilities modification application to be collocated, removed or replaced.

“Authorized person” is the person, employees, agents, consultants, and contractors, authorized in writing by applicant to complete and submit an eligible facilities modification application on behalf of applicant and who is authorized to receive any notices on behalf of applicant of any action taken by the City regarding the application.

“Base station” shall mean and refer to the structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.

(i) The term includes, but is not limited to, 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.

(ii) The term includes, but is not limited to, 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).

(iii) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City under this Chapter, supports or houses equipment described in paragraphs (i) - (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the City under this section, does not support or house equipment described in paragraphs (i) - (ii) above.

“City” shall mean and refer to the City of XX.

“City Code” shall mean and refer to the codified ordinances of the City.

“Collocation” shall mean and refer to the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

“Conceal” or “Concealment” shall mean and refer to eligible support structures and transmission facilities designed to look like some feature other than a wireless tower or base station.

“Deemed approved” shall mean and refer to an eligible facilities modification application that has been deemed approved upon the City’s failure to act, and has become effective, as provided pursuant the FCC Eligible Facilities Request Rules.

“Eligible facilities modification application” or “application” shall, unless the context clearly requires otherwise, mean and refer to a written document submitted to the City pursuant to this chapter for review and approval of a proposed facilities modification.

“Eligible facilities modification” shall mean and refer to any proposed facilities modification that has been determined pursuant to the provisions of this chapter to be subject to this chapter and which does not result in a substantial change in the physical dimensions of an eligible support structure.

“Eligible facilities modification permit” or “permit” shall, unless the context clearly requires otherwise, mean and refer to a written document issued by the approval authority pursuant to this chapter approving an eligible facilities modification application.

“Eligible support structure” shall mean and refer to any existing tower or base station as defined in this chapter, provided that it is in existence at the time the eligible facilities modification application is filed with the City under this chapter.

“Existing” shall, for purpose of this chapter and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the City, or under another State, county or local regulatory review process; provided that, a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

“Proposed facilities modification” shall mean and refer to a proposal submitted by an applicant to modify an eligible support structure which the applicant asserts is subject to review under Section 6409 of the Spectrum Act, and involving:

- (i) collocation of new transmission equipment;
- (ii) removal of transmission equipment; or
- (iii) replacement of transmission equipment.

“FCC” shall mean and refer to the Federal Communications Commission or its successor.

“FCC Eligible Facilities Request Rules” shall mean and refer to 47 C.F.R. Part 1 (PART 1 ó PRACTICE AND PROCEDURE), Subpart CC § 1.40001 as established pursuant to its Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, or as may be thereafter amended.

“Site” shall, for towers other than towers in the public rights-of-way, mean and refer to the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, shall mean and be further restricted to, that area in proximity to the structure and to other transmission equipment already deployed on the ground.

“Small cell facility” shall mean and refer to a personal wireless services facility that meets both of the following qualifications:

(i) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and

(ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

“Small cell network” shall mean and refer to a collection of interrelated small cell facilities designed to deliver personal wireless services.

“Spectrum Act” shall mean and refer to the “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).

“Substantial change criteria” shall mean and refer to the criteria set forth in this Chapter at XMC XX.XX.090.

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

öTowerö shall mean and refer to any structure built for the sole or primary purpose of supporting any antennas and their associated facilities, licensed or authorized by the FCC, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

050 Applicability - Relationship to other Rules and Regulations.

A. Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and notwithstanding 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.

B. Non-conforming Structures. This chapter shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming, or legal non-conforming, structure at the time a completed eligible facilities modification application is filed with the City. To the extent that the non-conforming 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.

C. 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.

D. 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.

E. 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, 13-32; WC Docket No. 11-59; FCC 14-153; and Sections **XX.XX**.020 (Adoption of Findings and Conclusions) and **XX.XX**.030 (Purpose and Intent) of this Code.

F. 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 ten percent, or twenty 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 twenty 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.

*Note: See, RCW 43.21C.0384 and WAC 197-11-800(25)

G. Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the City's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

060 Permit Classification. An eligible facilities modification permit shall be classified as an administrative permit subject to review and approval or denial by the approval authority.

070 Application Submittal Requirements; Determination of Completeness.

A. Purpose. This section sets forth the submittal requirements for an eligible facilities modification application. The purpose of the submittal requirements is to ensure that the City has all information and documentation that is reasonable necessary to determine if the applicant's proposed facilities modification will substantially change the physical dimensions of an eligible support structure. The submittal requirements are not intended to require the applicant to establish the need for the proposed modifications or to justify the business decision to propose such modifications.

B. Submittal Requirements. No eligible facilities modification application shall be deemed complete unless it is, in writing, accompanied by the applicable application and review fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant, certifying the truth and accuracy of the information provided in the application. The application shall include the following submittals, unless waived by the approval authority:

1. The following contact information for the Authorized Person:

a. Name;

- b. Title;
- c. Mailing Address;
- d. Phone Number; and
- f. Electronic Mail Address (Optional).

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 the 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 following shall be required:

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 located 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. If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required:

Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.

8. If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required:

Record 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 or similar regulatory authority, or (b) as of the most recent modification that received city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater.

9. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority

granted under the City Code, or an ordinance or a municipal code of another local government authority, the following shall be required:

A copy of the document (e.g., *CUP or SUP*) setting forth such pre-existing 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. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required:

Applicant 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. 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 following shall be required:

Record 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 (a) include any excavation, (b) 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 (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required:

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. The city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.

13. If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the following shall be required:

A technical report by a qualified engineer accredited by the state of Washington, demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed collocation, removal, or replacement of transmission equipment and 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 applicant's demonstration of necessity.

14. If the applicant proposes a modification to a tower, the following shall be required:

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, including:

- a. The number and type of antennas that can be accommodated;
- b. The basis for the calculation of capacity; and
- c. A written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standards.

The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

15. If the applicant proposes a modification to a base station, the following shall be required:

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 following shall be required:

A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting, (a) the location, elevation

and dimensions of the existing eligible support structure, (b) the location, elevation and dimensions of the existing transmission equipment, (c) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment, (d) the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each, (e) any proposed modification to the eligible support structure, (f) the location of existing structures on the site, including fencing, screening, trees, and other significant site features, and (g) 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. Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (PART 1 ó PRACTICE AND PROCEDURE), Section 1.1307, as amended, or, in the event than an FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment.

C. Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the substantial change criteria. A wavier, to be effective, must be in writing and signed by the approval authority.

D. 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 [REDACTED]. An application, and any supplemental submittals, must be filed in person during regular business hours of the City and must be accompanied by the applicable permit review fee(s). Any application received by the City without contemporaneous payment, or deposit, of the applicable permit review fees will be rejected.

E. Completed Application; Determination; Tolling.

1. Determination of Completeness. The approval authority shall, within thirty (30) days of receipt of the application, 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 at XMC [REDACTED].070(B) of this chapter, unless waived by the approval authority pursuant to XMC [REDACTED].070(C). The determination of completeness shall not preclude the approval authority from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, or substantial changes in the proposed action occur, or the proposed facilities modification is modified by applicant, as determined by the approval authority.

2. Incomplete Application. The approval authority shall notify the applicant within thirty (30) days of receipt of the application that the application is incomplete. Such notice shall clearly and specifically delineate all missing documents or information.

3. Tolling Timeframe for Review. The application review period begins to run when the application is received, and may be tolled when the approval authority 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 approval authority and applicant. The timeframe for review is not tolled by a moratorium on the review of eligible facility modification applications.

a. To toll the timeframe for review for incompleteness, the approval authority must provide written notice to the applicant within thirty (30) days of the date of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to submittals set forth in MC XX.XX.070(B) and any supplemental information requested by the approval authority that is reasonably related to determining whether the proposed facilities modification will substantially change the physical dimension of an eligible support structure.

b. The timeframe for review begins running again when the City is in receipt of applicant's supplemental submission in response to the approval authority's notice of incompleteness.

c. Following a supplemental submission, the approval authority shall have ten (10) days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (3)(c). Except as may be otherwise agreed to by the applicant and the approval authority, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

d. A notice of incompleteness from the City will be deemed received by the Applicant upon the earlier of, personal service upon the authorized person, delivery by electronic mail to the authorized person (if such delivery is authorized for receipt of notice by the authorized person), or three (3) days from deposit of the notice in the United States Mail, postage prepaid, and in an envelope properly addressed to the authorized person using the address set forth in the application.

4. Modification of Application. In the event that after submittal of the application, or as a result of any subsequent submittals, applicant 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 approval authority 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.

080. Review of Application; Approval.

A. Review of Application. The approval authority 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. Timeframe for Review. Within sixty 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 approval authority, the approval authority shall approve the application and contemporaneously issue an eligible facilities modification permit unless the approval authority 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. Approval; Denial. An eligible facilities application shall be approved, and an eligible facilities permit issued, upon determination by the approval authority 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 approval authority 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 substantial change criteria.

D. Deemed 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.

E. 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.

F. 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 generally applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and safety. Violation of any such applicable code or standard shall be deemed to be a violation of the eligible facilities modification or deemed approved application.

G. 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 of 180 days from the date of issuance, or the date the application is deemed approved.

H. Remedies. Notwithstanding any other provisions in the City code, no administrative review 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. 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 thirty (30) days following the date of denial or following the date of notification of the deemed approved remedy.*

*Note: The FCC Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, Paræ 234 ó 236, provides that the City shall have 30 days from the date of notification by the applicant of a deemed granted remedy to bring a legal action in a court of competent jurisdiction to challenge the deemed granted remedy, and that the applicant shall have 30 days from the date of denial to bring a legal action in a court of competent challenging a denial of the application.

090 Substantial Change Criteria.

A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the following criteria:

A. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten (10) feet, whichever is greater;

Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildingsø rooftops; in other circumstances, changes in height should 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.*

B. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty 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;

C. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

a. it entails any excavation or deployment outside the current site;

b. it would defeat the concealment elements of the eligible support structure;
or

c. 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 MC XX.XX.090.

*Note: The FCC rules refer to the date of passage of the Spectrum Act. The Spectrum Act was enacted on February 22, 2012. Presumably the FCC intended to refer to the date of enactment as the date of passage.

100. Non-Conforming Structure; Termination.

1. Application. The provisions of this section XMC XX.XX.100 shall apply to any facilities modification constructed, installed, placed or erected pursuant to an eligible facilities modification permit, or pursuant to a deemed approved remedy, which facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed eligible facilities modification application was filed.

2. Non-Conforming Structure Determination. A facilities modification to which this section applies is subject to termination as a non-conforming structure upon the following conditions:

a. Final, Non-Appealable Decision. An appellate court, in a final and non-appealable decision, determines that § 6409(a)(1) of the Spectrum Act is unconstitutional or otherwise determined to be invalid or unenforceable; and

b. Notice of Non-Conforming Structure Determination. The City provides written notice to the applicant that the City has determined that the facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed eligible facilities modification application was filed and that the facilities modification constitutes a non-conforming structure pursuant to the provisions hereof and must be made conforming or the facilities modification terminated.

3. Conformance; Termination. Upon receipt of notice of the City's non-conforming structure determination, applicant shall abate the non-conformance by either, conforming the site to the zoning and development regulations in effect at the time the completed eligible facilities modification application was filed, or removing the facilities modification and returning the site to the condition that existed prior to the construction, installation, placement or erection of the facilities modification. The time period for conformance shall be one (1) year from the date of the City's notice of the non-conforming structure determination.

4. Health and Safety Codes. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

5. Administrative Appeal. The applicant, or its successors or assigns, may appeal the City's determination of non-conformance to the City Hearing Examiner by filing a notice of appeal within _____ (____) calendar days of the date of the determination of non-conformance, excluding holidays.

110 Enforcement; Violation.

Compliance with the provisions of this chapter is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions set forth at **XXX** of the City Code.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____ DAY OF _____, 20__.

CITY OF XX

, Mayor

ATTEST/AUTHENTICATED:

, City Clerk

Approved as to form:

, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date: