

CITY OF MOUNTLAKE TERRACE

ORDINANCE NO. 2722

**AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE,
WASHINGTON, ADOPTING INTERIM LAND USE REGULATIONS AND
OFFICIAL CONTROLS TO CHAPTER 19.137 MTMC PURSUANT TO RCW
35A.63.220 AND RCW 36.70A.390 BY: AMENDING CHAPTER 19.137
WIRELESS COMMUNICATION FACILITIES OF THE MOUNTLAKE
TERRACE MUNICIPAL CODE TO INTEGRATE WITH SMALL CELL
PERMITTING PROVISIONS AND ADOPT STATE AND FEDERAL TIME
LIMITATIONS ON A TEMPORARY BASIS WHILE THE CITY
FORMALLY STUDIES AND EVALUATES POTENTIAL PERMANENT
AMENDMENTS; DECLARING AN EMERGENCY, ADOPTING FINDINGS
AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE**

WHEREAS, Chapter 19.137 MTMC provides for bulk and review procedures applicable to the installation of wireless communications facilities in the various zones of the City; and

WHEREAS, contemporaneous with the consideration of this Ordinance, the City Council enacted amendments to its franchise requirements in Chapter 12.20 of the Mountlake Terrace Municipal Code in order to provide for the deployment of small cell facilities and most importantly to establish time limits known as “shot clocks” as required by federal laws such as 47 U.S.C. §1455(a) and 47 CFR 1.40001; and

WHEREAS, federal law and regulation sets time limits on the processing of applications for eligible facility requests to expand existing structures which do not substantially change the height or profile of the structures used to collocate wireless communications facilities; and

WHEREAS, Eligible Facilities Requests which would not substantially change the height or profile cannot be denied and/or are deemed approved if not acted upon within sixty (60) days of the receipt of an application; and

WHEREAS, federal law imposes a ninety (90) day time limit or “shot clock” on consideration of applications for the collocation of wireless communications facilities on existing towers and base stations and a one hundred and fifty (150) day shot clock for the consideration of all requests to install new antenna support structures; and

WHEREAS, the City Council acknowledges that the growing use of smart phones and other personal wireless devices creates a substantial need for wireless data transmission and therefore deems it in the public interest to adopt the federal guidelines by separate contemporaneous action while integrating the provisions of such changes in the zoning code in order to ensure for the speedy review of applications; and

WHEREAS, potential conflicts between City land use review timelines and the preemptive federal shot clocks creates a time sensitive emergency requiring the use of an interim zoning ordinance; and

WHEREAS, the adoption of the contemporaneous franchise revisions and shot clocks requires integration with the City's zoning code in order to provide for design guidelines and processes to be used in the consideration of applications for Eligible Facilities Requests as well as small cell deployment applications; and

WHEREAS, as required by RCW 36.70A.390, a public hearing was held on April 2, 2018; and

WHEREAS, a Work Plan has been developed for related studies and evaluations of potential permanent amendments; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this interim zoning Ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA) but that a SEPA checklist was prepared and a determination will be issued in the future as well as future permanent zoning regulations shall be reviewed in accordance with SEPA Rules; and

WHEREAS, the City Council finds that the interim zoning amendments to the Mountlake Terrace Municipal Code set forth herein are consistent with and will implement the City's comprehensive plan.

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

Section 1. Recitals Incorporated. The Recitals set forth above are hereby adopted and incorporated as Findings of Fact and/or Conclusions of Law of the City Council pursuant to the requirements of Mountlake Terrace Municipal Code 19.110.240C. The City Council bases its findings and conclusions on the entire record of testimony and exhibits, including all written and oral testimony before the Planning Commission and the City Council.

Section 2. Additional Findings. The Council may adopt further additional findings after the public hearing is held and evidence presented to the City Council. The City Council further enters the following additional findings:

A. The interim code amendments set forth herein are consistent with the City's Comprehensive Plan and bears a substantial relation to the public health, safety and welfare.

B. The interim code amendments set forth herein are in the best interest of City of Mountlake Terrace residents.

C. The interim code amendments set forth herein have been processed, reviewed, considered and adopted in material compliance with all applicable state and local procedural requirements codified in Section 19.110.240C MTMC and Chapter 36.70A RCW.

D. All relevant procedural requirements of the State Environmental Policy Act have been satisfied with respect to this Ordinance.

Section 3. Interim Amendments. Chapter 19.137 Wireless Communication Facilities of the Mountlake Terrace Municipal Code is hereby amended to read as follows:

Chapter 19.137
WIRELESS COMMUNICATION FACILITIES

Sections:

19.137.010	Description, purpose, and intent.
19.137.015	Exemptions.
19.137.020	Definitions.
19.137.030	Permitted locations and approval processes.
19.137.040	Locational hierarchy – Applicable to all WCF approvals.
19.137.050	Structural hierarchy – Applicable to all WCF approvals.
19.137.060	Criteria for WCF approvals – Administrative review.
19.137.070	Criteria for WCF approvals – conditional use permits.
16.137.080	Design standards for small cell deployments.
19.137.090	Criteria for equipment enclosures.
19.137.100	Height variance.
19.137.110	Technical and safety requirements.
19.137.120	Independent technical review of WCF applications.
19.137.130	WCF removal.
19.137.130	Appeals.

19.137.010 Description, purpose, and intent.

A. In addition to the general purposes set forth in the Comprehensive Plan, this chapter is included in the Zoning Code to:

1. Provide for clear regulations concerning wireless communication facilities that are consistent with the Telecommunications Act of 1996; and
2. Encourage locations and designs for wireless communication facilities that minimize their adverse visual impacts, especially in residential areas and the downtown community business zoning district.

B. This chapter, together with the provisions of the building code and other applicable requirements, is intended to regulate telecommunication services including wireless communication facilities.

19.137.015 Exemptions.

The following facilities and antennae are exempt from the provisions of this chapter:

- A. Antennas designed to receive video programming from direct broadcast satellites (DBS).
- B. Antennas designed to receive video programming from multi-channel, multi-point distribution service (MMDS). MMDS is a wireless video service technology that is transmitted terrestrially rather than via satellite.
- C. Antennas designed to receive video programming from television broadcast stations.
- D. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.
- E. Antennas and related equipment no more than three feet in height that are being stored, shipped or displayed for sale.

F. Radar systems for military and civilian communication and navigation.

G. Licensed amateur (ham) radio stations.

H. Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when use as a secondary use of the property.

I. Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height or dimensions of antennas, towers, or buildings); provided, that compliance with the standards of this title are maintained.

J. Subject to compliance with all other applicable standards of this title, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until 30 days after the completion of such emergency activity.

K. A cell on wheels or other temporary personal wireless telecommunications facility shall be permitted at a time and manner as determined by the city.

L. Automated meter reading (AMR) facilities for collecting utility meter data for use in the sale of utility services, except for WIP and other antennas greater than two feet in length; so long as the AMR facilities are within the scope of activities permitted under a valid franchise agreement between the utility service provider and the City.

M. Strand-mounted and other stand-alone Wi-Fi antennae less than 2.5 cubic feet in total volume when installed pursuant to a valid franchise and certified as compliant with FCC regulations governing RF mediation.

N. Eligible Facilities Requests. See Chapter 20.20 MTMC.

O. Minor modifications, maintenance, repair, or replacement of elements of an existing WCF, whether emergency or routine, so long as there is little or no change in the visual appearance.

P. Facility swaps between different communications providers; provided, that the affected facilities are permitted, and the swap does not require modifications that are more than minor in character.

19.137.020 Definitions.

See 12.20.020 MTMC for related definitions.

A. "Antenna": any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole, light standard, building or other structure for the purpose of providing wireless services.

B. "Antenna Height": the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna.

C. "Base Station": A structure or equipment at a fixed location that enables FCC-licensed or authorized communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

1. 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.

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small cell networks).

3. Any structure other than a tower that, at the time the relevant application is filed with

the City under this section, supports or houses equipment described in subsections C(1) and (2) above that has been reviewed and approved under the applicable zoning or siting process or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the City under this section does not support or house equipment described in (a)(i) – (a)(ii) of this section.

D. “Antenna support structure” means a freestanding structure or device specifically designed, constructed and/or erected to support a WCF antenna and may include, but is not limited to, a monopole, lattice tower, or guy-wire support tower. Antenna support structure does not include attachment support structures, nor a preexisting utility pole not built for the sole or primary purpose of supporting any FCC licensed or authorized antenna.

E. “Attached WCF” means WCF antenna(s) that are attached to an existing building or structure together with the associated attachment support structure. The existing building or structure may include, but is not limited to, buildings, water towers, legal conforming commercial signs, and utility support structures.

F. “Attachment support structure” means any structure that is used to attach an “attached WCF” to an existing building or structure, except as otherwise precluded by this chapter.

G. “Co-location” means the location of WCF antenna(s) serving more than one wireless communication service provider on a single support structure or attachment support structure. When used in the context of an Eligible Facilities Request, collocation means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

H. “Concealment elements”: Transmission facilities designed to look like some feature other than a wireless tower or base station or which minimizes the visual impact of an antenna by use of nonreflective materials, appropriate colors and/or a concealment canister.

I. “Eligible Facilities Request”: Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment.

J. “Eligible support structure”: Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

K. “Equipment structure”: A facility, shelter, cabinet or vault used to house and protect electronic or other associated equipment necessary for processing wireless communications signals. “Associated equipment” may include, for example, air conditioning, backup power supplies and emergency generators.

L. “Existing”: A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for the purposes of this definition.

M. “Freestanding WCF” means an antenna support structure together with the antenna(s) attached to that structure.

N. “Microcells”: Is defined in accord with RCW 80.36.375.

O. “Service provider”: Is defined in accord with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.

P. “Small cell” and “small cell network”: Are defined in accord with RCW 80.36.375.

Q. “Substantial change”: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

1. 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 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

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 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;

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 pre-existing ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site;

5. It would defeat the concealment elements of the eligible support structure; or

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 non-compliant only in a manner that would not exceed the thresholds identified above.

R. “Telecommunications service”: Is defined in accord with RCW 35.99.010(7) and 12.20.020 MTMC.

S. “Tower”: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site.

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

U. “Unified enclosure”: a small cell facility providing concealment of antennas and equipment within a single enclosure.

V. “Utility pole”: A structure designed and use primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

W. “Utility support structure” means utility poles or towers supporting electrical, telephone, cable or other similar facilities, but does not include street light standards, pedestrian light standards, traffic light structures, traffic sign structures, or water towers.

X. “WCF” means wireless communication facilities.

Y. “Whip antennas” means omni-directional antennas designed to receive and/or transmit signals in a 360-degree pattern and, for the purposes of this section, do not include antennas more than five inches in diameter.

Z. “Wireless communication facilities” (“WCF”) means an unstaffed facility for the transmission and/or reception of radio-frequency (RF), microwave or other signals for commercial communications purposes, typically consisting of one or more antennas, an antenna support structure or attachment support structure, and an equipment enclosure.

19.137.030 Permitted locations and approval processes.

A. WCFs outside of the public right-of-way shall be located only in the zoning districts described in this chapter. For Eligible Facilities Requests, see Chapter 12.20, Article VII. See Chapter 12.20, Article VI for provisions relating to approvals of small cell facilities in the public right-of-way. Small cell facilities are outright permitted uses in every zone of the City when located in the public right-of-way.

B. In areas of the general commercial district that are within 150 feet of the I-5 corridor and in the public facilities and services zoning district, attached WCFs and freestanding WCFs may be approved by the Director based on administrative review. In any zoning district, co-location of an additional WCF upon an existing freestanding WCF may be approved by the Director based on administrative review. No open public record hearing is required. For an Eligible Facilities Request, see Chapter 12.20, Article VII. The criteria to be used to determine if the WCF shall be approved are set out in MTMC 19.137.040, 19.137.050, 19.137.060 and 19.137.080.

C. In the general commercial zoning district (not within 150 feet of the I-5 corridor), and in the light industrial/office park and freeway/tourist zoning districts:

1. Attached WCFs may be approved by the Director based on administrative review. No open public record hearing is required. The criteria to be used to determine if the WCF shall be approved are set out in MTMC 19.137.040, 19.137.050, 19.137.060 and 19.137.080.

2. Freestanding WCFs require a conditional use permit issued by the Hearing Examiner pursuant to MTMC 19.110.200. In addition to applying the criteria in MTMC 19.110.200(D), the Hearing Examiner shall apply the criteria set out in MTMC 19.137.040, 19.137.050, 19.137.070, and 19.137.080.

D. In the community business, recreation and park, and special development commercial/residential zoning districts, attached and freestanding WCFs require a conditional use permit issued by the Hearing Examiner pursuant to MTMC 19.110.200. In addition to applying the criteria set out in MTMC 19.110.200(D), the Hearing Examiner shall apply the criteria set out in MTMC 19.137.040, 19.137.050, 19.137.070, and 19.137.080.

E. In the downtown community business (town center), multi-household residential low density, multi-household residential medium density, special development residential, and mobile home park zoning districts:

1. Freestanding WCFs other than small cell facilities in the public right-of-way are not permitted.

2. Attached WCFs require a conditional use permit issued by the Hearing Examiner pursuant to MTMC 19.110.200. In addition to applying the criteria set out in MTMC

19.110.200(D), the Hearing Examiner shall apply the criteria set out in MTMC 19.137.040, 19.137.050, 19.137.070, and 19.137.080.

F. In the single-household residential zoning district:

1. Freestanding WCFs outside the public right-of-way are not permitted.
2. Attached WCFs are permitted only in the public right-of-way on existing utility poles pursuant to Chapter 12.20, Article VI, provided, however, that new utility poles in undergrounded areas and facilities not complying with the small cell design and concealment standards established by 19.137.080 MTMC may be approved pursuant to a conditional use permit issued by the Hearing Examiner pursuant to MTMC 19.110.200. In addition to applying the criteria set out in MTMC 19.110.200(D), the Hearing Examiner shall apply the criteria set out in MTMC 19.137.040, 19.137.050, 19.137.070, and 19.137.080.

G. For administrative determinations and Hearing Examiner decisions on WCFs, written findings and conclusions will be prepared to support the decision and retained in City files.

19.137.040 Locational hierarchy – Applicable to all WCF approvals.

A. WCF approvals for facilities other than small cell deployments in the public right-of-way, whether subject to administrative review or requiring a conditional use permit, shall reflect the following siting priorities (in descending order):

1. Public facilities and services zoning district, and areas of the general commercial zoning district that is within 150 feet of the I-5 corridor and, in any zoning district, the co-location of an additional WCF upon an existing freestanding WCF.
2. General commercial zoning district (not within 150 feet of the I-5 corridor), and light industry/office park and freeway/tourist zoning districts.
3. Community business district, special development commercial/residential, and recreation and park zoning districts.
4. Community business downtown, multi-household residential, special development residential, and mobile home park zoning districts.
5. Single-household residential zoning district.

B. Notwithstanding anything in subsection A of this section, if the applicant demonstrates through engineering data certified by a Washington-licensed engineer that strict adherence to the locational hierarchy results in a significant gap in service coverage, then the location next lowest on the hierarchy shall be preferred, so long as the least intrusive means is utilized to close or eliminate the gap in coverage.

19.137.050 Structural hierarchy – Applicable to all WCF approvals.

A. WCF approvals for facilities other than small cell deployments in the public right-of-way, whether subject to administrative review or requiring a conditional use permit, shall reflect the following structural priorities for placement of the WCF (in descending order):

1. WCFs attached to existing buildings.
2. WCFs attached to existing structures other than buildings, where the existing structure already supports another WCF (i.e., co-location).
3. WCFs attached to existing structures other than buildings, where the existing structure does not already support another WCF (i.e., no co-location).
4. Freestanding WCFs.

B. Notwithstanding anything in subsection A of this section, if the applicant demonstrates through engineering data certified by a Washington-licensed engineer that strict adherence to the

structural hierarchy results in a significant gap in service coverage, then the structure next lowest on the hierarchy shall be preferred so long as the least intrusive means is utilized to close or eliminate the gap in coverage.

19.137.060 Criteria for WCF approvals – Administrative review.

A. The following criteria shall be applied in approving, approving with conditions, or denying a WCF that is subject to administrative review pursuant to MTMC 19.137.030(B) or (C)(1), provided, however, that the provisions of Part VII, Chapter 2012 MTMC shall govern in the event of conflict:

1. Height.
 - a. The height of attached WCFs shall not exceed the greater of:
 - i. The maximum building height allowed for the underlying zoning district; or
 - ii. The height of the structure to which it is attached or which it replaces; provided, that in no event shall the WCF add more than 15 feet of height to the existing structure, except as provided in subsection (A)(4)(a) of this section.
 - b. Notwithstanding other provisions of this section, the height of freestanding WCFs shall not exceed:
 - i. Two hundred feet in the public facilities and services zone; or
 - ii. One hundred fifty feet in areas of the general commercial zoning district that are within 150 feet of the I-5 corridor.
2. Setbacks.
 - a. Freestanding WCFs located on a lot must conform at least to the setback requirement for structures in the underlying zoning district, except that the minimum side setback for a WCF support structure is 20 feet.
 - b. Freestanding WCFs located on a lot adjacent to a single-family zoning district or to the downtown community business zoning district shall comply with subsection (A)(2)(a) of this section or shall be set back a minimum of one-half the height of the antenna support structure from the nearest single-family or downtown community business lot line, whichever is the greater.
3. Antenna Design. The WCF antenna(s) shall be either:
 - a. A whip antenna attached to a building; or
 - b. Flush mounted to a utility support structure (see 12.20. Article VI MTMC for flush mounting standards); or
 - c. Contained within a canister that is a continuation of a utility support structure or antenna support structure, or in the case of an antennae that has exposed elements, the antennae and all of its exposed elements; or
 - d. Flush mounted within 12 inches of the face of the building, mechanical equipment screening, or antenna support structure. The antenna(s) shall be painted to match the material to which they are attached; except that whip antenna arrays shall be painted a light color.
4. Small Cell Development Standards. See 19.137.080 MTMC.
5. Equipment Enclosures. WCF equipment enclosures shall comply with the criteria set out in MTMC 19.137.080.
6. Site Development Plan. A site development plan shall be submitted showing at a minimum the location, size, screening and design of all WCF structures and enclosures, including fences, and the location, number, and species of all proposed landscaping.
7. RF Emission Standards. The applicant shall provide the certification of an RF engineer with knowledge of the proposed development that the WCF will comply with the radio frequency

emission standards adopted by the Federal Communications Commission. The City recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of radio-frequency emissions and WCFs that meet FCC standards shall not be conditioned or denied on the basis of RF impacts.

19.137.070 Criteria for WCF approvals – Conditional use permits.

A. In addition to the criteria set out in MTMC 19.110.200(D), the following criteria shall be applied in approving, approving with conditions, or denying WCFs that require conditional use permits pursuant to MTMC 19.137.030. See Chapter 12.20, Article VI MTMC for small cell deployment in the public right-of-way, except for Eligible Facilities Requests which shall be considered under Chapter 12.20 Article VI MTMC:

1. Visual Impact.

a. WCFs, including equipment enclosures, shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent possible, consistent with the proper functioning of the WCF. WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

b. A site development plan shall be submitted showing at a minimum the location, size, screening and design of all WCF structures and enclosures, including fences, and the location, number, and species of all proposed landscaping.

c. WCFs in the downtown community business zoning district shall be consistent with the Town Center Design Standards.

d. WCFs in each commercial or multifamily zoning district shall be consistent with the district's design standards.

2. Height.

a. The height of an attached WCF shall not exceed the greater of (i) the maximum building height allowed for the underlying zoning district, or (ii) the height of the structure to which it is attached or which it replaces; provided, that in no event shall the WCF add more than 15 feet of height to the existing structure, except as otherwise provided in subsection (A)(4)(a) of this section.

b. The height of freestanding WCFs requiring conditional use permits shall not exceed:

i. Sixty feet in the community business, special development commercial/residential, and recreation and park zoning districts; and

ii. One hundred feet in the general commercial, light industry/office park, and freeway/tourist zoning districts.

3. Setbacks.

a. Freestanding WCFs must conform to the setback requirement for structures in the underlying zoning district, except that the minimum side setback for a WCF support structure is 20 feet.

b. Freestanding WCFs located on a lot adjacent to a single-family zoning district or the downtown community business zoning district shall comply with subsection (A)(3)(a) of this section or shall be set back a minimum of one-half the height of the antenna support structure from the nearest single-family or downtown community business lot line, whichever is the greater.

c. The Hearing Examiner may impose greater setbacks than required under subsection (A)(3)(a) or (A)(3)(b) of this section in order to satisfy the visual impact criteria of subsection (A)(1) of this section.

4. Equipment Enclosures. Equipment enclosures shall comply with the criteria set out in MTMC 19.137.080 in addition to the visual impact criteria set out in subsection (A)(1) of this section.

5. Provision for Future Co-Location. Applicants shall provide information regarding the opportunity for the co-location of other antenna(s) and related equipment. Where technically feasible, and where opportunities for smaller WCFs with fewer impacts are limited due to topography, lack of existing above ground structures or other circumstances, provision for future co-location may be required.

6. RF Emission Standards. The applicant shall provide a certification by an RF engineer familiar with the proposed development that the WCF will comply with the radio frequency emission standards adopted by the Federal Communications Commission. The City recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of radio-frequency emissions and WCFs that meet FCC standards shall not be conditioned or denied on the basis of RF impacts.

7. Antenna Design. Any WCF antenna(s) shall be either:

- a. A whip antenna attached to a building; or
- b. Flush mounted to the utility structure (see 12.20 Article VI MTMC for flush mounting standards); or
- c. Contained within a canister that is a continuation of a utility support structure or antenna support structure; or
- d. Flush mounted within 12 inches of the face of the building, mechanical equipment screening, or antenna support structure. The antenna(s) shall be painted to match the material to which they are attached, except that whip antenna arrays shall be painted a light color.

19.137.080 Design and Concealment standards for small cell deployments.

Small cell deployments whether permitted on the right-of way under Chapter 12.20 Article IV MTMC or permitted in accordance with this chapter shall conform to the following design standards:

A. Small Cell Facilities Attached Non-Wooden Poles. Small cell facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right of way or poles outside of the right of way shall conform to the following design criteria:

1. Antennas and the associated equipment enclosures shall be sited and installed in a manner which minimizes the visual impact on the streetscape either by fully concealing the antennae and associated equipment fully within the pole or through a concealment element plan which provides an equivalent or greater impact reduction. This requirement shall be applied in a manner which does not dictate the technology employed by the service provider nor unreasonably impair the technological performance of the equipment chosen by the service provider.

2. 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 within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.

3. An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall

be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas 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.

4. 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.

5. The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary for adequate clearance from electrical wires, whichever is greater.

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

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

B. Wooden Pole Design Standards. Small cell facilities located on wooden poles shall conform to the following design criteria:

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

2. A pole extender may be used instead of replacing an existing pole, but may not increase the height of the existing pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A "pole extender" as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

3. Replacement wooden poles may either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.

4. Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.

5. Panel antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.

6. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume, with a cumulative total antenna volume not to exceed nine (9) cubic feet, unless additional volume is technically necessary which in such cases the total volume may not exceed twelve (12) cubic feet.

7. A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection B(1) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.

8. An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

9. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

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

11. An applicant who desires to enclose its antennas and equipment within a unified enclosure may do so, provided that such unified enclosure does not exceed four (4) cubic feet. To the extent possible the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is technically required and confirmed in writing by the pole owner.

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

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

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

C. Small Cell Facilities Attached to Existing Buildings.

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 it complements 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.

5. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.

6. Small cell facilities shall be painted and textured to match the adjacent building surfaces.

D. Small Cell facilities mounted on cables strung between existing utility poles shall conform to the following standards.

1. Each strand mounted facility must be less than three (3) cubic feet in volume;

2. Only one strand mounted facility is permitted per cable between any two 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 instance is required by the pole owner for safety clearance;

4. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;

5. Grantee may not place an ancillary pole or ground mounted equipment to accommodate such strand mounted facilities, unless in the case of ground mounted equipment placed in pre-existing equipment cabinets; and

6. Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original stand).

E. General Requirements.

1. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed underground or the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.

2. No equipment shall be operated so as to produce noise in violation of Chapter 8.20 MTMC.

3. Small cell facilities are not permitted on traffic signal poles.

4. Replacement poles and new poles shall comply with the American 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.

5. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.

6. The design criteria as applicable to small cell facilities described herein shall be considered concealment elements and such small cell facilities may only be expanded upon an eligible facilities request described in Article VII, Chapter 12.20 MTMC, when the modification does not defeat the concealment elements of the facility.

7. 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.

8. Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.

9. Side arm mounts for antennas or equipment are prohibited.

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

11. Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the building or pole upon which they are attached.

12. The City may consider the cumulative visual effects of small cells mounted on poles within the rights-of-way in when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the service provider.

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

F. New Poles in the Rights-of-Way for Small Cell Facilities and Installations in a Design District.

1. New poles within the rights-of-way are only permitted if the applicant can establish that:

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

b. The proposed wireless communications facility receives approval for a concealment element design, as described in subsection 3 below;

c. The proposed wireless communications facility also complies with shoreline and SEPA, if applicable; and

d. No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance (Chapter 16.15 MTMC), except when determined to be exempt pursuant to said ordinance.

2. An application for a new pole in the right-of-way is subject to a conditional use permit.

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

a. The concealment element design should 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. Use of a unified enclosure equal to or less than four (4) cubic feet in volume may be permitted in meeting these criteria.

b. If the Director has already approved a concealment element design 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 technologically feasible, or that such deployment would undermine the generally applicable design standards.

4. Even if an alternative location is established pursuant to subsection E(1)(a) and (2) the conditional use permit process may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.

5. Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the city to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed wireless communications facility is more than sixty (60) feet.

6. Installation of small cell facilities in a Design District [see 12.20.720(3) MTMC] shall be permitted by an administrative approval of a concealment plan utilizing the design and concealment standards contained in this chapter.

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

19.137.090 Criteria for equipment enclosures.

A. The following criteria apply to all equipment enclosures, whether they are part of a WCF subject to administrative review or a WCF requiring a conditional use permit. Except for Eligible Facilities Requests are permitted pursuant to Chapter 12.20, Article VII MTMC. See 19.137.080 for small cell deployment criteria regarding unified equipment enclosures.

1. Equipment enclosures shall not exceed six feet in any one dimension, unless it can be demonstrated by substantial evidence that compliance with this provision would prevent the wireless communications provider from addressing a significant gap in service and the alternate proposed constitutes the minimum size necessary to support operation of the WCF as certified by the applicant's Washington-licensed engineer.

2. Equipment enclosures shall be located within buildings or placed underground wherever feasible.

3. When equipment enclosures cannot be located in buildings or underground, they shall be:

a. Designed to blend in with existing surroundings, using compatible or neutral colors and/or vegetative or other screening at least as tall as the enclosure;

b. Consistent with relevant design standards for the underlying zoning district; and

c. Located so as to be as unobtrusive as possible consistent with proper functioning of the WCF.

4. Equipment enclosures on a lot must meet all applicable setbacks for the underlying

zoning district and be situated at least 25 feet from any public right-of-way, except on specific sites that are expressly reserved, in a plat thereof, for utility easements.

5. No noise shall be permitted to escape from equipment enclosures in excess of that permitted by Chapter 173-60 WAC.

19.137.100 Height variance.

The Hearing Examiner may grant a height variance for a WCF upon finding that the criteria in MTMC 19.110.210(C) are met and that at least two of the following criteria are also met:

A. Compliance with the provisions of this chapter would prevent the wireless communications service provider from addressing a significant gap in service and the alternative proposed constitutes the minimum necessary to permit acquisition or transmission of a usable signal; or

B. The alternative proposed has less impact on property owners in the vicinity than strict application of the WCF height provisions; or

C. The WCF is an essential public facility under the definition in MTMC 18.05.080.

19.137.110 Technical and safety requirements.

A. Construction and Installation. The construction and installation of antenna support structures, antennas, attachment support structures, and equipment enclosures shall be subject to the requirements of the City's building code (with structural calculations provided by the applicant's Washington-licensed engineer), including the City's electrical code, and all applicable standards published by the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA).

B. Artificial Lighting. No antenna support structures shall be artificially lighted except as required by the Federal Aviation Administration or other governmental agency.

C. Ladder Rungs. The Building Official shall determine if antenna support structures may have ladder rungs within 20 feet of the ground.

D. WCF Equipment Enclosures. WCF equipment enclosures shall be kept locked at all times and shall be clearly labeled as to the owner, operator, or a person to be contacted in the event of an emergency.

E. Sidewalks. WCFs shall not obstruct an existing public sidewalk or trail or the area of public right-of-way or easement reserved for a future public sidewalk or trail.

F. Street Lanes. WCFs shall not obstruct a traffic lane, parking lane or bicycle lane and shall not create a traffic or sight distance impairment.

19.137.120 Independent technical review of WCF applications.

The City may retain the services of an independent technical expert of its choice to provide technical evaluation of permit applications for WCFs. The applicant shall pay all the costs of said review. Such third-party expert review is intended to be a site-specific review of technical aspects of the WCF permit application and not a subjective review of the WCF proposal. Based on the results of the third-party expert review, the City may require changes to the WCF application or impose conditions on its approval.

19.137.130 WCF removal.

A. Owners and operators of WCFs shall provide the Director with copies of any notice of intent to cease operations that is provided to the Federal Communications Commission.

B. Any antenna support structure that has had no antenna mounted upon it for a period of 180

successive days, or if the antennas mounted thereon are not operated for a period of 180 successive days, shall be considered abandoned, and the owner thereof shall remove such structure and any accompanying equipment enclosure within 90 days after receipt of notice from the City to do so. If such structure and equipment enclosure is not so removed, the City may seek and obtain a court order directing such removal and imposing a lien upon the equipment and/or the real property upon which such structures are situated in an amount equal to the cost of removal. Any notice given under this section is subject to appeal to the Hearing Examiner. In the event that more than one wireless communication service provider is using the support structure, then the provision to lien the real property shall not become effective until all users cease using such structure.

C. Removal upon Undergrounding. A WCF must be removed at no expense to the City if co-located on a utility support structure that is subsequently undergrounded.

19.137.140 Appeals.

WCF decisions other than administrative approvals relating to small cell facilities, small cell permits and Eligible Facilities Requests, Chapter 12.20 Articles VI and VII may be appealed in accordance with Chapter 18.05 MTMC, Article VII. The timely filing of an appeal of a WCF permit decision shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

Section 4. Work Plan Adopted. During the interim zoning period City staff will study the issues concerning the establishment of the deployment of small cells, micro cells, and distributed antenna systems by establishing standards for permitting, location, aesthetics and compatibility for communication structures, facilities, and uses. The Work Plan attached to this Ordinance is hereby approved and adopted by the Mountlake Terrace City Council.

Section 5. Public Hearing Held. As required by RCW 36.70A.390, on April 2, 2018, the City Council held a public hearing on this Interim Zoning Ordinance.

Section 6. Duration of Interim Zoning. This interim zoning shall be in effect for one (1) year commencing on April 2, 2018 and ending on April 1, 2019, unless an ordinance is adopted amending the Mountlake Terrace Municipal Code and rescinding the interim zoning before April 1, 2019.

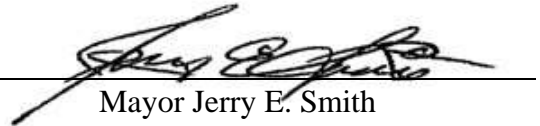
Section 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.13.190. Without an immediate interim zoning ordinance establishing standards for permitting, location and aesthetics applications for deployment for small cells, micro cells, and distributed antenna systems could be submitted and become vested, leading to the development or use of property that is incompatible with the laws adopted by the City of Mountlake Terrace. Therefore, this interim zoning Ordinance must be imposed as an emergency measure to protect the public health, safety and welfare. This Ordinance does not affect any existing vested rights.

Section 8. Corrections. The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 9. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 10. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.13.190.

PASSED by the majority plus one of the City Council of the City of Mountlake Terrace this 2nd day of April, 2018, and signed in authentication of its passage this 2nd day of April, 2018.



Mayor Jerry E. Smith

ATTEST: 

City Clerk

APPROVED AS TO FORM: 

Gregory G. Schrag, City Attorney