ORDINANCE NO. 03-2019

AN ORDINANCE OF THE CITY OF COVINGTON, WASHINGTON, CONCERNING WIRELESS COMMUNICATIONS FACILITIES; AMENDING TITLE 18 OF THE COVINGTON MUNICIPAL CODE TO ADD A NEW CHAPTER 18.70A AUTHORIZING AND ESTABLISHING STANDARDS FOR THE DEPLOYMENT OF SMALL WIRELESS FACILITIES; AMENDING CMC CHAPTER 18.70 REGARDING WIRELESS COMMUNICATION FACILITIES; AMENDING CMC CHAPTER 18.20 RELATED TO CERTAIN DEFINITIONS PERTAINING TO WIRELESS COMMUNICATION FACILITIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission (FCC) recently adopted a Declaratory Ruling, Order and Regulation (FCC Order), which imposes limitations on local municipalities, including the City of Covington (City), regarding processing and review of all permits associated with the deployment of small wireless facilities; and

WHEREAS, the City Council finds that the existence of the federal regulations requires the enactment of administrative procedures and processes which can comply with the FCC Order; and

WHEREAS, the permitting procedures as well as the aesthetic design and concealment standards that govern deployment of small wireless facilities will become part of CMC Chapter 18.70A; and

WHEREAS, the adoption of aesthetic standards for deployment of small wireless facilities and utilization of a consolidated process emphasizing administrative review enables compliance with the federal presumptively reasonable time limits for review; and

WHEREAS, separately, federal law and regulation also 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, the FCC Order also impacted provisions of Chapter 18.70 regulating macro wireless communication facilities; and

WHEREAS, the City determined that additional modifications and updates to Chapter 18.70 was warranted; and

WHEREAS, the City completed the required environmental review under the State Environmental Policy Act and a Determination of Nonsignificance (DNS) was issued on March 1, 2019, and required notice to the State Department of Commerce was issued on March 1, 2019; and

WHEREAS, on March 21, 2019, following notice as required by law, the Planning Commission held a public hearing to receive staff and citizen input concerning the proposed code amendments and all persons who wished to be heard on the matter were heard; and

WHEREAS, the Planning Commission considered the changes to the City Code, allowed for public comment at the public hearing, and made a recommendation to the City Council to adopt these revisions to the City Code; and

WHEREAS, after consideration of the record, the recommendations of the staff, and the Planning Commission, the City Council has determined that it is in the public interest to adopt the proposed regulations that shall govern wireless communication facilities within the City of Covington as set forth below;

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

Section 1. The City Council hereby makes the following findings:

A. This ordinance amending the Covington Municipal Code adopting regulations related to wireless communication facilities imposes restrictions necessary to protect public health and safety, while not unreasonably discriminating among providers of functionally equivalent services nor having an effect of prohibiting personal wireless services within the City.
B. The proposed regulations were properly sent to the Washington State Department of Commerce for expedited review on March 12, 2019 as required by the Growth Management Act; approval is anticipated prior to adoption of this ordinance.
C. The requirements of Chapter 14.27 CMC, for land use code amendments have been met.
D. As required by Chapter 14.27.040 CMC, the adoption and amendment of codes in ordinance sections set forth below are consistent with the Comprehensive Plan, comply with the Growth Management Act and serve to advance the public health, safety and welfare.
E. The Planning Commission has recommended that the City Council make these amendments to CMC Chapters 18.20 and 18.70 and adopt a new chapter 18.70A addressing small wireless facilities.
F. The above recitals are adopted as additional procedural findings in support of this ordinance.

Section 2. Amendment of Title 18 CMC – Adoption of New Chapter 18.70A. Title 18 of the Covington Municipal Code is amended by the addition of a new CMC Chapter 18.70A Small Wireless Facilities, which is hereby attached as Exhibit A.

Section 3. Amendment of CMC Chapter 18.70 regarding Wireless Communication Facilities. Chapter 18.70 of the Covington Municipal Code is amended as shown in attached Exhibit B.

Section 4. Amendment of CMC Chapter 18.20 Technical Terms and Land Use. Chapter 18.20 of the Covington Municipal Code related to certain definitions pertaining to wireless communication facilities is hereby amended as follows:

18.20.067 Antenna(s).

"Antenna(s)" means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15. ~~means any exterior system of electromagnetically tuned wires, poles, rods, reflecting disks, or similar devices used to transmit or receive electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals, or other communication signals between terrestrial and/or orbital based points, including without limitation: directional antennas (also known as "panel" antennas) that transmit and receive radio frequency signals in a specific directional pattern of less than 360 degrees; omnidirectional antennas (also known as "whip" antennas) that transmit and receive radio frequency signals in a 360-degree radial pattern, but does not include antennas utilized specifically for television reception; and parabolic antennas (also known as "dish" antennas) that are bowl-shaped devices for the reception and/or transmission of radio frequency communication signals in a specific directional pattern. (Ord. 09-12 § 2 (Exh. B); Ord. 42-02 § 2 (21A.06.067))~~

18.20.1166 Significant gap in service, wireless communications.

Repealed.~~"Significant gap in service, wireless communications" means a large geographic area within a service area(s) of the applicant in which a large number of applicant's remote user subscribers are unable to connect or maintain a connection to the national telephone network through applicant's wireless telecommunications network. A "dead spot" (defined as small areas within a service area where the field strength is lower than the minimum level for reliable service) does not constitute a significant gap in service. (Ord. 09-12 § 2 (Exh. B))~~

18.20.1284 Tower, wireless communication facility.

"Tower, wireless communication facility" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self supporting lattice towers, guy towers or monopoles. The term includes, without limitation, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, and alternative tower structures. The term does not include utility poles originally constructed for the use of small wireless facilities. ~~(Ord. 09-12 § 2 (Exh. B))~~

18.20.1351 Utility pole.

"Utility pole" means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths. ~~any facility owned by an electric utility that supports electrical lines that carry a voltage of less than 115kV, or other public utility, such as coaxial cables for cable and fiber optic cable for telephone lines. (Ord. 09-12 § 2 (Exh. B))~~

Section 5. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 6. 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 7. Effective Date. This ordinance shall be in full force and effective five (5) days from the passage and publication in accordance with law.

Passed by the City Council on the 9th day of April 2019.

Mayor Jeff Wagner

PUBLISHED: April 12, 2019
EFFECTIVE: April 17, 2019

ATTESTED:

Sharon Scott, City Clerk

APPROVED AS TO FORM:

Kathy Hardy, City Attorney

EXHIBIT A

Chapter 18.70A
SMALL WIRELESS FACILITIES

Sections:

18.70A.010	Purpose.
18.70A.020	Definitions.
18.70A.030	General Provisions.
18.70A.040	Application requirements for small wireless facilities.
18.70A.050	Review Process.
18.70A.060	Permit Requirements.
18.70A.070	Modifications to small wireless facilities.
18.70A.080	Consolidated Permit.
18.70A.090	Design Zones and Pedestrian Poles.
18.70A.100	Design and Concealment standards for small wireless facilities.
18.70A.110	New poles for small wireless facilities and installations in a Design Zone or on Pedestrian Poles.
18.70A.120	Appeals
18.70A.130	Removal of abandoned small wireless facilities.

18.70A.010 Purpose.

The purposes of this Chapter are to set forth regulations for the permitting, management, placement, development, and removal of small wireless facilities. Among the purposes included are to:

A. Permit and manage reasonable access to the right-of-way of the City for communication purposes on a nondiscriminatory basis.

B. Establish clear and nondiscriminatory local guidelines and standards which use federal guidelines for the exercise of local authority with respect to the regulation of right-of-way use.

C. Conserve the limited physical capacity of the public rights-of-way held in public trust by the City.

D. Ensure that all service providers maintaining facilities or providing services within the City comply with the ordinances, rules, and regulations of the City.

E. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare.

F. Minimize potential adverse visual, aesthetic, and safety impacts of small wireless facilities.

G. Encourage the design of such small wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.

H. Encourage the collocation or attachment of small wireless facilities on existing support structures to help minimize the total number and impact of such structures throughout the community.

18.70A.020 Definitions.

For the purpose of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein. Words not otherwise defined shall have their common and ordinary meaning:

A. "Antenna" means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15.

B. "Applicant" means any person or corporation submitting an application for a small wireless facility permit.

C. "City property" means any real property owned by City, whether in fee or other ownership estate of interest.

D. "Collocation" means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

E. "Director" means the Community Development Director or his/her designee.

F. "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

G. "Franchise" or "franchise agreement" is a contract by which a grantee is allowed to use City right-of-way for the purpose of carrying on the business in which it is generally engaged, including furnishing service to members of the public.

H. "Grantee" means the person, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this Chapter and the lawful successor, transferee or assignee of such person, firm or corporation.

I. "Light Pole" means a pole used primarily for lighting streets, parking areas, parks or pedestrian paths.

J. "Pedestrian Pole" means a pole that is less than 19 feet in height as measured from the ground.

K. "Public right-of-way" or "right-of-way" means land acquired or dedicated for public roads and streets but does not include:

1. State highways;

2. Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;

3. Structures, including poles and conduits, located within the right-of-way;

4. Federally granted trust lands or forest board trust lands;

5. Lands owned or managed by the state parks and recreation commission; or

6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec 912 and related provisions of federal law that are not open for motor vehicle use.

L. "Service provider" is defined consistently with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of telecommunication services.

M. "Small wireless" and "small wireless facility" shall have the same meaning as a "small wireless facility" as set forth in 47 CFR 1.6002.

N. "Structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of telecommunications service (whether on its own or comingled with other types of services).

O. "Telecommunications facilities" means the plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireline or wireless telecommunications service.

P. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this Chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

Q. "Traffic Signal Poles" means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers.

R. "Transmission equipment" means 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 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.

S. "Unified enclosure" means a small wireless facility providing concealment of antennas and equipment within a single enclosure.

T. "Utility pole" means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

U. "Wireline" means services provided using a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

18.70A.030 General Provisions.

A. Small wireless facilities shall not be considered nor regulated as essential public facilities.

B. Small wireless facilities located outside of the public rights-of-way may be either a primary or a secondary use. A different use of an existing structure on the same lot shall not preclude the installation of a small wireless facility.

C. No person may place, construct, or modify a wireless communication facility subject to this chapter without first obtaining the required permit(s), issued in accordance with this chapter.

D. Small wireless communication facilities that are governed under this chapter shall not be eligible for variances under CMC 18.125.030, development conditions under CMC 18.30.030(B)(4), or exceptions to height limits under CMC 18.30.210. Any request to deviate from this chapter shall be based on the modifications set forth in this chapter.

18.70A.040 Application requirements for small wireless facilities.

A. Any application for a small wireless facility both inside and outside of the right-of-way shall comply with the following application requirements for a small wireless facility permit described in this chapter. For small wireless facilities inside the right-of-way, the applicant must also comply with the requirements pursuant to CMC Chapter 12.65.

B. Consistent with CMC 18.70A.080, all permits, leases, and right-of-way use authorizations necessary for the deployment of small wireless facilities and, if applicable an application for franchise, shall be consolidated for review and a decision rendered to the full extent feasible consistent with the timeframes established within federal and state law.

C. In order to manage its rights-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City, the City of Covington has adopted this administrative process for the

deployment of small wireless facilities. The City and applicant for a franchise and other permits associated with the deployment of small wireless facilities face challenges in coordinating applicable legislative and administrative processes under the Federal Communications Commission regulations. A franchise for the use of the City's right-of-way is a contract which requires approval by the City Council. The small wireless permits and any other land use or other permit application submitted pursuant to this chapter shall be reviewed and issued by the Director. Applicants are encouraged and expected to provide all related applications in one submittal, unless they have already obtained a franchise.

D. The Director is authorized to establish franchise and other application forms to gather the information required by these ordinances from applicants and to determine the completeness of the application process as provided herein.

1. Franchise. The process typically begins with and depends upon approval of a franchise for the use of the public right-of-way to deploy small wireless facilities if any portion of the applicant's facilities are to be located in the right-of-way. An applicant with a franchise for the deployment of small wireless facilities in the City may proceed to directly apply for a small wireless facility permit and related approvals. An applicant at its option may utilize phased development.

2. Small Wireless Facility Permits. The application requires specification of the small wireless facility components and locations as further required in the small wireless permit application described in subsection E below. Prior to the issuance of a small wireless facility permit, the applicant shall pay a permit fee in an amount as determined by the City Council and adopted by resolution, or the actual costs incurred by the City in reviewing such permit application.

3. Associated Permit(s). The applicant shall attach all associated permits requirements such as applications or check lists required under the Critical Areas, Shoreline or SEPA ordinances. Applications for deployment of small wireless facilities in City Design Zones or for new poles shall comply with the requirements in CMC 18.70A.110.

4. Leases. An applicant who desires to attach a small wireless facility to any utility pole within the rights-of-way and owned by the City shall include an application for a lease as a component of its application. The City Council authorizes the Director to approve leases for small wireless facilities for City-owned light poles located in the right-of-way. Leases for the use of other public property, structures or facilities shall be submitted to the City Council for approval.

E. The following information shall be provided by all applicants for a small wireless permit:

1. The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be

specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:

(a) The location of overhead and underground public utility, telecommunication, cable, water, adjacent lighting sewer drainage and other lines and equipment within 50 feet of the proposed project area (which the project area shall include the location of the fiber source and power source). Further, the Applicant shall include all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 50 feet from the proposed project area.

(b) The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.

(c) The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small cell facility, to the extent to which the applicant is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements. Where another party is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements, applicant's construction drawings will include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain fiber and electric service to the small cell facility.

(d) If the site location includes a replacement light pole, that is located five feet or more from the existing light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk within 150 feet of the existing light.

(e) Compliance with the aesthetic requirements of CMC 18.70A.100.

2. The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. To extent that the pole or structure is not owned by the applicant, the applicant shall demonstrate in writing that they have authority from the pole owner to install the small wireless facility on the pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards, as well as assurances that the specific pole can withstand wind and seismic loads, from the pole owner, unless the pole owner is the City. Submission of the lease agreement between the pole owner and the applicant is not

required. If the proposed small wireless facility is not within the rights-of-way, the applicant must provide written approval from the property owner. For city-owned poles or structures, the applicant must obtain a lease from the City prior to or concurrent with the small wireless permit application and must submit as part of the application the information required in the lease for the City to evaluate the usage of a specific pole.

3. The applicant can batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.

4. Any application for a small wireless permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and CMC 16.10. Further, any application proposing small wireless facilities in Shoreline Management Zones (pursuant to CMC 16.05) or in Critical Areas (pursuant to CMC 18.65) must indicate that the application is exempt or comply with the review processes in such codes.

5. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facilities will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small wireless facility will operate. If facilities which generate RF radiation necessary to the small wireless facility are to be provided by a third party, then the small wireless permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.

6. The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

7. A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that both construction plans and final construction of the Small Cell facilities and the antenna support structure or pole and foundation are designed to reasonably withstand wind and seismic loads.

8. Applicant materials required for a right of way construction permit.

9. Proof of a valid Covington business license.

10. Recognizing that small wireless facility technology is rapidly evolving, the Director is authorized to adopt and publish standards for the technological and structural safety of City-owned structures and to formulate and publish application questions for use when an applicant seeks to attach to City-owned structures.

11. Such other information as the Director, in his/her discretion, shall deem appropriate to effectively evaluate the application based on technical, engineering, and aesthetic considerations.

18.70A.050 Review Process.

A. Review. The following provisions relate to review of applications for a small wireless facility permit.

1. The City will review the permit application to determine compliance with this Chapter.

2. Vertical clearance shall be reviewed by the Director to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-ways.

3. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, traffic warrants, city ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement pole or new pole must: be physically possible, cannot obstruct vehicular or pedestrian traffic or the clear zone, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

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

5. Small wireless facilities may not encroach onto or over private property or property outside of the right of way without the property owner's express written consent.

B. Independent Third-Party Review. The City may, at its discretion, contract with an independent engineering and technical review consultant to review the land use or other permit application. The applicant shall be responsible for actual costs charged by the consultant, in addition to any actual costs incurred by the City's review. Based on the results of the independent technical review, the City may require changes or request additional information to complete the application review. The technical review shall address the following:

1. The accuracy and completeness of the application;

2. The applicability of analysis techniques and methodologies;

3. The validity of conclusions reached;

4. The viability of other sites in the City for the use intended by the applicant; and

5. Any specific engineering or technical issues designated by the City.

C. Final Review. Small wireless facility permits on existing or replacement structures will be reviewed and approved or denied as a Type 1 decision. Small wireless facility permits for new structures in the rights-of-way or for structures in Design Zones are subject to review and approval as a Type 2 decision and consistent with the requirements in CMC 18.70A.110.

D. Eligible Facilities Requests. The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded upon an Eligible Facilities Request described in CMC 18.70.095 when the modification does not defeat the concealment elements of the small wireless facility.

E. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 47 USC 332 and other applicable statutes, regulations and case law. Applicants for franchises and the small wireless facility permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers, utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this Chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

F. Withdrawal. Any applicant may withdraw an application submitted pursuant to CMC 18.70A.040 at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or their successors in interest. When a withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs prior to the Director's decision, then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of City costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Director's decision, there shall be no refund of all or any portion of such fee.

G. Supplemental Information. Failure of an applicant to provide supplemental application information as requested by the Director within sixty (60) days of notice by the Director shall be deemed a denial of that application, unless an extension period has been approved by the Director.

18.70A.060 Permit Requirements.

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

B. Post-Construction As-Builts. Within thirty (30) days after construction of the small wireless facility, the grantee shall provide the City with as-builts of the small wireless facilities demonstrating compliance with the permit and site photographs.

C. Permit Time Limit. Construction of the small wireless facility must be completed within six (6) months after the approval date by the City. The grantee may request one (1) extension to be limited to three (3) months, if the applicant cannot construct the small wireless facility within the original six (6) month period.

D. Site Safety and Maintenance. The grantee must maintain the small wireless facilities in safe and working condition. The grantee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

E. Operational Activity. The grantee shall commence operation of the small wireless facility no later than three (3) months after installation, unless the City and applicant agree to extend this period, or delay is caused by the lack of commercial power, communications facilities or other events outside of the reasonable control of the wireless provider.

18.70A.070 Modifications to small wireless facilities.

A. If a grantee desires to make a modification to an existing small wireless facility, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a small wireless facility permit.

B. A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility, or the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small wireless facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a small wireless facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small wireless facility. Right-of-way construction permits or building permit may be required for such routine maintenance, repair or replacement consistent with CMC Chapter 12.65.

18.70A.080 Consolidated Permit.

A. The issuance of a small wireless permit grants authority to construct small wireless facilities in the rights-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both the public works and the development services department. If the applicant requires a new franchise to utilize the right-of-way, the franchise approval may be consolidated with the small wireless facility permit review if requested by the applicant. As an exercise of police powers pursuant to RCW 35.99.040(2), the small wireless facility permit is not a right-of-way use permit, but instead a consolidated public works and land use permit and the issuance of a small wireless facility permit shall be governed by the time limits established by federal law for small wireless facilities.

B. General standards applicable to the use of the rights-of-way described in CMC Chapter 12.65 shall apply to all small wireless facility permits.

18.70A.090 Design Zones and Pedestrian Poles.

A. The following area is designated as a Design Zone for the purpose of siting small wireless facilities: any area inside the downtown boundary pursuant to CMC Chapter 18.31.

B. Any applicant who desires to place a small wireless facility in a Design Zone must first

establish that the applicant cannot locate the small wireless facility outside of the Design Zone. Applications for small wireless facilities in a Design Zone may be approved if the applicant demonstrates that due to technical infeasibility the applicant cannot locate the proposed small wireless facility on an existing or replacement pole within 500 feet of the proposed site and outside of the Design Zone.

C. Small wireless facilities within the Design Zone may not be placed on pedestrian poles.

D. Applications for small wireless facilities within Design Zones must receive a Type 2 decision and must comply with a concealment element design described in CMC 18.70A.110 below.

E. The City desires to discourage the use of Pedestrian Poles, applications for small wireless facilities attached to a Pedestrian Pole must comply with CMC 18.70A.110 below.

18.70A.100 Design and Concealment standards for small wireless facilities.

Small wireless facility deployments permitted inside or outside the right-of way shall conform to the following design standards:

A. Small wireless facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right-of-way or non-wooden poles outside of the right-of-way shall conform to the following design criteria:

1. Upon adoption of a city standard small wireless facility pole design(s) within the Design and Construction Standards, an applicant is encouraged to first consider using or modifying the standard pole design to accommodate its small wireless facility without substantially changing the outward visual and aesthetic character of the design. The applicant, upon a showing that use or modification of the standard pole design is either technically or physically infeasible, or that the modified pole design will not comply with the city's ADA, sidewalk clearance requirements and/or would violate electrical or other safety standards, may deviate from the adopted standard pole design and use the design standards as adopted in this subsection A.

2. The applicant shall minimize to the extent possible the antenna and equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment. The antennas and equipment shall be located using one of the following methods:

(a) Concealed completely within the pole or pole base. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design. If within the pole base, the base shall meet the ADA requirements and not impact the pedestrian access route.

(b) Located on a pole. If located on a pole, antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning for antennas no more than twelve (12) inches off of the pole and for associated equipment no more than six (6) inches off the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. The equipment enclosure and all other wireless equipment associated with the pole (including but not limited to conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs. The applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than six (6) inches from the surface of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole.

(c) Underground in a utility vault. If located underground, the access lid to the equipment enclosure shall be located outside the footprint of any pedestrian curb ramp and shall have a nonskid surface meeting ADA requirement if located within an existing pedestrian access route.

(d) On private property. If located on private property, the applicant shall submit a copy of an executed easement or lease agreement with the private property owner prior to the small wireless facility permit issuance.

3. The furthest point of any equipment enclosure may not extend more than twenty-eight (28) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.

4. All conduit, cables, wires and fiber must be routed internally in the non-wooden 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.

5. 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 technically 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.

6. 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. Any replacement pole shall be placed as close to the original pole as possible, but no more than five (5) from the existing pole location.

7. The height of any replacement pole may not extend more than six (6) feet above the height of the existing pole or the minimum additional height technically necessary; provided that the height of the replacement pole cannot be extended further by additional antenna height.

8. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a twenty (20) inches measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection E.4 below.

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

B. Wooden pole design standards. Small wireless 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 wireless 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 must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.

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. 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.

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. The furthest point of any antenna or equipment enclosure may not extend more than twenty-four (24) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.

9. 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.

10. 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.

11. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (E)(1). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

12. An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated

with the pole, including wireless equipment associated with the antenna and any pre-exiting associated equipment on the pole does not exceed twenty-eight (28) cubic feet. The unified enclosure may not be placed more than twelve (12) inches from the surface of the pole. 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, provided that such location does not interfere with the operation of the banners or signs.

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

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

15. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing utility pole measured at the base of the pole.

16. 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 wireless facility.

C. Small wireless facilities attached to existing buildings, shall conform to the following design criteria:

1. Small wireless 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 wireless facilities 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 wireless facilities shall be colored, painted and textured to match the adjacent building surfaces.

7. Small wireless facilities must meet the height requirement of the underlying zoning district.

8. Feed lines and coaxial cables shall be located below the parapet of the rooftop.

9. If a cabinet enclosure cannot be located within the building where the wireless communication facilities will be located, then the City's first preference is for the wireless telecommunication carrier to locate the equipment on the roof of the building. If the equipment can be screened by placing the equipment below the parapet walls, no additional screening is required. If screening is required, the proposed screening must be consistent with the existing building in terms of color, design, architectural style, and material. If the cabinet equipment cannot be located on the roof or within the building then it shall be located underground consistent with subsection E(1).

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

1. Each strand mounted facility shall not exceed three (3) cubic feet in volume;

2. Only one strand mounted facility is permitted 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 technically necessary or 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. Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and

6. Pole mounted equipment shall comply with the requirements of subsections A and B above.

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

8. Strand mounted facilities are only permitted on poles that have existing overhead wirelines.

E. General requirements.

1. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed under ground 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 CMC Chapter 8.20.

3. Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC §§ 253 and 332.

4. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.

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

6. 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 or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches); provided that, signs are permitted as concealment element techniques where appropriate.

7. 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.

8. Side arm mounts for antennas or equipment must be the minimum extension necessary and may not create a gap of more than twelve (12) inches for wooden poles and no more than six (6) inches for non-wooden poles between the pole and the antennas or equipment.

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

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

11. Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use in the residential zones.

12. The City may consider the cumulative visual effects of small wireless facilities 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 applicant.

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.

18.70A.110 New poles for small wireless facilities and installations in a Design Zone or on Pedestrian Poles.

A. New poles for small wireless facilities, installations of small wireless facilities in a Design Zone, or placement on a Pedestrian Pole in the rights-of-way in a non-residential zone, are only permitted if the applicant can establish that:

1. The proposed small wireless 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;

2. The proposed small wireless facility complies with the applicable requirements of CMC 18.70A.100(E).

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

4. The proposed small wireless facility also complies with Shoreline Management Act, and SEPA, if applicable; and

5. No new poles shall be located in a critical area or associated buffer required by CMC Chapter 18.65, except when determined to be exempt pursuant to CMC Chapter 18.65.

B. If the proposed small wireless facility is for placement on a Pedestrian Pole within the rights of way of a residential zone, the applicant must establish that placement of the small wireless facility on an existing or replacement pole located on an arterial or collector street is technically infeasible. Upon such demonstration by the applicant, the applicant is encouraged to place the small wireless facility at a corner and shall utilize a concealment element design as described in subsection C below.

C. 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 small wireless facility, including but not limited to fiber and power connections.

1. The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including similar height to the extent

technically feasible. If the proposed small wireless facility is placed on a replacement pole in a Design Zone, then the replacement pole shall be of the same general design as the pole it is replacing, unless the development services department otherwise approves a variation due to aesthetic or safety concerns. Any concealment element design for a small wireless facility should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the pole. 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. Further, applicant designs should, to the extent technically and physically possible, comply with the generally applicable design standards adopted pursuant to CMC Section D.

2. If the Director has already approved a concealment element design either for the applicant or another small wireless 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.

D. Even if an alternative location is established pursuant to CMC 18.70A.110(A)(1), the Director 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.

E. 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. The requirement also applies to the placement of replacement poles when the replacement is necessary for the installation or attachment of the small wireless facility, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the wireless facility is more than sixty (60) feet.

F. 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 of the street scape.

18.70A.120 Appeals

Small wireless facilities permit decisions, including any Type 2 decisions, made by the Director are final decisions appealable to the King County Superior Court. The timely filing of an appeal of a small wireless facility permit decisions shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

18.70A.130 Removal of abandoned small wireless facilities.

Any small wireless facility that, after the initial operation of the facility, is not used for the purpose for which it was intended at the time of filing the application for a continuous period of 12 months shall be considered abandoned. The wireless telecommunication carrier of such abandoned small wireless facility shall remove the same within 90 days of receipt of a notice from the City notifying the owner or operator of such abandonment. Whenever a facility is abandoned or ceases operation, the entire facility shall be removed, including, but not limited to, all antennas, antenna supports, feeder lines, base stations, electronic equipment, and the pole upon which the small wireless facility is located, unless the City determines that such pole shall remain. Failure to remove such an abandoned facility shall result in declaring the small wireless facility a public nuisance. If there are two or more users of a single pole, then this section shall not become effective until all users cease using the pole.

Exhibit B

Chapter 18.70
WIRELESS COMMUNICATION FACILITIES

Sections:

18.70.010 Purpose.

18.70.020 Exemptions.

18.70.030 Applicability, review, and permits required.

18.70.040 Types of permits – Priority – Preferences – Restrictions.

18.70.050 General requirements.

18.70.060 Landscaping/screening.

18.70.070 Electrical transmission structure collocation – Specific development standards.

18.70.080 Adding antennas to an existing wireless communication facility tower – Specific development standards.

18.70.090 Utility pole collocation – Specific development standards.

18.70.095 Eligible Facilities Request

18.70.100 Building-mounted concealed facility – Specific development standards.

18.70.110 Request to use nonconcealed facilities attached to a building in lieu of a concealed building attachment.

18.70.120 Nonconcealed building-mounted specific development standards.

18.70.130 Requests for new towers.

18.70.140 Tower-specific development standards.

18.70.150 Height modification.

18.70.160 Setback modification.

18.70.170 Expiration.

18.70.180 Removal of abandoned wireless communication facilities.

18.70.010 Purpose.

The purpose of this chapter is to regulate the placement, construction and modification of wireless communication facilities in order to protect the health, safety, and welfare of the public while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City of Covington. The purpose of this chapter will be achieved through adherence to the following objectives:

(1) Encourage the location of wireless communication facilities in nonresidential areas;

(2) Allow wireless communications facilities in residential areas when necessary to meet the functional requirements of the telecommunications industry;

(3) Minimize the total number of wireless communication facilities throughout the community;

(4) Protect residential areas and land uses from potential adverse impacts that wireless communication facilities might create, including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historic resources, flight corridors, and health and safety of persons and property;

(5) Require cooperation between competitors and, as a primary option, encourage the joint use of new and existing wireless communication facility sites and structures to the greatest extent possible in order to reduce cumulative negative impact upon the City;

(6) Allow wireless communication companies to use City property for the placement of wireless facilities, where consistent with other public needs, as a means to generate revenue for the City;

(7) Encourage providers of wireless communication facilities to locate these facilities in areas where the adverse impact on the community is minimal;

(8) Ensure wireless communication facilities are configured in a way that minimizes the adverse visual impact of the wireless communication facilities, as viewed from different vantage points, through careful design landscape screening, minimal impact siting options and camouflaging techniques, and through assessment of technology, current location options, siting, future available locations, innovative siting techniques, and siting possibilities beyond the jurisdictional boundaries of the City;

(9) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

(10) Provide for the removal of wireless communication facilities that are abandoned or no longer inspected for safety concerns and building code compliance, and provide a mechanism for the City to cause these abandoned wireless communication facilities to be removed to protect citizens from imminent harm and danger;

(11) Avoid potential damage to adjacent properties from tower failure through engineering, careful siting, and maintenance of wireless communication facilities;

(12) Provide a means for public input on major wireless communication facility placement, construction, and modification; and

(13) Establish clear and nondiscriminatory local regulations concerning wireless telecommunications providers and services that are consistent with Federal and State laws and regulations pertaining to telecommunications providers. (Ord. 09-12 § 1 (Exh. A))

18.70.020 Exemptions.

The following are exempt from the provisions of this chapter:

(1) Antennas and related equipment ~~no more than three feet in height~~ that are being stored, shipped, or displayed for sale.

(2) Radar systems for military and civilian communication and navigation.

(3) Any wireless internet facility that is owned and operated by a Federal, State, or local government.

(4) Antennas for the receiving and sending of licensed amateur (HAM) radio stations and citizen band stations; provided, that the antennas do not exceed the base height requirements of the applicable zoning district and are owned and operated by a Federally licensed amateur radio station operator or are used exclusively for receive-only antennas. In order to reasonably accommodate licensed amateur radio operators as required by Federal Code of Regulations 47 CFR Part 97, as amended, and Order and Opinion (PRB-1) of the Federal Communications Commission of September 1985 and RCW 35A.21.260, a licensed amateur radio operator may locate a tower not to exceed the base height requirements of the applicable zoning district, provided the following requirements are met for such towers located in a single-family residentially zoned district:

(a) The tower and any antennas located thereon shall not have any lights of any kind on them and shall not be illuminated either directly or indirectly by any artificial means;

(b) The color of the tower and any antennas located thereon shall all be the same and such that they blend into the sky to the extent allowed under the requirements set forth by the Federal Aviation Administration;

(c) No signs shall be used in conjunction with the tower, except for one sign no larger than eight and one-half inches high and 11 inches wide, or as required by Federal regulations;

(d) No advertising logo, trademark, figurine, or other similar marking or lettering shall be placed on the tower or any wireless communication facilities mounted or otherwise attached thereto or any building used in conjunction therewith;

(e) A telescoping tower and any antennas may exceed the base height of the underlying zoning district when fully extended, up to a maximum 75 feet in height, if the tower and any antennas attached do not exceed the base height of the zoning district when it is retracted; when the antenna is not in use it must be fully retracted (nested);

(f) The tower shall be located a distance equal to or greater than its height, at full extension, from any existing residential structure located on adjacent parcels of property, including any attached accessory structures;

(g) A tower shall be located a distance at least three-quarters of its height, at full extension, from any property line on the parcel of property on which it is located, unless a licensed engineer certifies that the tower will not collapse or that it is designed in such a way that, in the event of collapse, it falls within itself, and, in that event, it shall be located at least one-third of its height, at full extension, from any property line;

(h) Towers shall not be leased or rented to commercial users and shall not otherwise be used for commercial purposes; and

(i) All towers shall meet all applicable State and Federal statutes, rules, and regulations, including obtaining a building permit from the City, if necessary.

(5) An antenna that is designed to receive or send direct broadcast satellite service and/or broadband signals, or other means for providing internet service including direct-to-home satellite services, and that is 3.28 feet (one meter) or less in diameter or diagonal measurement, and the antenna is attached to the residence or business that is utilizing the service.

(6) An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is 3.28 feet (one meter) or less in diameter or diagonal measurement.

(7) An antenna that is designed to receive television broadcast signals.

(8) Routine maintenance or repair of wireless communication facilities, excluding structural work or changes in height or dimensions of antennas, towers, or buildings; provided, that the wireless

communication facility received approval from the City of Covington or King County for the original placement, construction, or subsequent modification. Changing of antennas or radio units on wireless communication facilities is permitted, provided the new antennas have the same area or less of those removed, and provided that with regard to the modification of radio units that the equipment enclosure for such radio units is not expanded. The total number of antennas must remain the same. Additional ground equipment shall be placed within an approved equipment enclosure, provided the height of the equipment does not extend above the screen fence.

(9) Emergency communications equipment during a declared public emergency when the equipment is owned and operated by an appropriate public agency. In the event a building permit is required for any emergency maintenance, reconstruction, repair, or replacement, filing of the building permit application shall occur within 30 days after the commencement of such emergency activities. ~~The work performed must constitute a true emergency.~~ Scheduled replacement or repair work does not constitute an emergency. In the event a building permit is required for nonemergency maintenance, reconstruction, repair, or replacement, filing of the building permit application shall be required prior to the commencement of such nonemergency activities.

(10) Antennas and related equipment used by electric utility providers for the noncommercial communication, operation, and monitoring of their utility system may be collocated on their transmission structures or utility poles, provided the color of the antennas and equipment shall be the same as the pole or structure they are located on or a color that blends into the sky. (Ord. 09-12 § 1 (Exh. A))

(11) Small wireless facilities subject to CMC 18.70A.

18.70.030 Applicability, review, and permits required.

The standards and process requirements of this chapter shall apply to the placement, construction, or modification of all wireless communication facilities, except as specifically exempted in CMC 18.70.020.

(1) No person may place, construct, or modify a wireless communication facility subject to this chapter without first obtaining the required permit(s), issued in accordance with this chapter. Except as otherwise provided herein, the requirements of this chapter are in addition to the applicable requirements of CMC Title 18.

(2) Any land use or other permit application submitted pursuant to this chapter shall be reviewed and evaluated by the Director for all wireless communication facility projects located on public or private property.

(3) The applicant shall be responsible for obtaining any necessary local, State, and Federal permits and approvals for the project, and is responsible for complying with any conditions of approval placed on the application by local or other State or Federal permits or approvals.

(4) No provisions of this chapter shall be interpreted to allow the installation of a wireless communication facility to reduce the minimum parking or landscaping requirements on a site.

(5) Wireless communication facilities that are governed under this chapter shall not be eligible for variances under CMC 18.125.030, development conditions under CMC 18.30.030(B)(4), or exceptions to height limits under CMC 18.30.210. Any request to deviate from this chapter shall be based on the modifications set forth in this chapter.

(6) The City may, at its discretion, contract with an independent engineering and technical review consultant to review the land use or other permit application. The applicant shall be responsible for actual and reasonable costs charged by the consultant, in addition to any base fees and application fees set forth in the City's fee resolution. Based on the results of the independent technical review, the City may require changes or request additional information to complete the application review. The technical review shall address the following:

(a) The accuracy and completeness of the application;

(b) The applicability of analysis techniques and methodologies;

(c) The validity of conclusions reached;

(d) The viability of other sites in the City for the use intended by the applicant; and

(e) Any specific engineering or technical issues designated by the City.

(7) No alterations or changes shall be made to an approved wireless communications land use permit. Modifications which exceed the conditions of approval will require a new wireless communications land use permit and shall be reviewed based on the laws and rules in effect at the time of application. The Director has sole discretion to approve or deny any request for modifications to the land use approval. (Ord. 09-12 § 1 (Exh. A))

18.70.040 Types of permits – Priority – Preferences – Restrictions.

(1) Applications will be reviewed based on the type of wireless communication facility requested to be permitted. Each wireless communication facility requires a specific type of project review as provided for in the table in subsection (2) of this section.

(2) Table.

Type of Permit Required Based on Type of Wireless Communication (WC) Facility

(3)

Type of WC Facility(3)	Zoning		
	Residential	**Commercial**	**Resource/Industrial**
	R-4, R-6, R-8, R-18	**CC, GC, NC, TC, MC, MHO**	**M, I**
Transmission tower collocation	Type 1	Type 1	Type 1
Adding antennas to an existing tower	Type 1 (1)	Type 1 (1)	Type 1 (1)
Utility pole collocation	Type 2	Type 2	Type 2
Concealed building attached	Type 2 (2)	Type 2 (2)	Type 1
Nonconcealed building attached	Type 2	Type 2	Type 1
New tower or height modification request	Type 3	Type 3	Type 3

Notes:

~~(1) Provided, that the height of the tower does not increase and the square footage of the enclosure area does not increase. If the enclosure area is increased it shall be a Type 2 review.~~

(1) Provided, that the application qualifies as an eligible facilities request.. If the application is not an eligible facilities request, it shall be a Type 2 review.

(2) An applicant may request to install a nonconcealed building-attached facility under CMC 18.70.110.

(3) In the event of uncertainty on the type of wireless facility, the Director shall have the authority to determine how a proposed facility is incorporated into Table 18.70.040(2) and the type of permit required.

(3) Priorities. The priorities for the type of wireless communication facility shall be based upon their placement in the table in subsection (2) of this section; most desirable facilities are located toward the top

of the table and the least desirable facilities toward the bottom. An application for a wireless communication facility shall follow the hierarchy provided in the table in subsection (2) of this section. For example, an applicant shall demonstrate, by engineering evidence, that collocation on an electrical transmission structure is not feasible before moving to a utility pole collocation, and so forth, with the last possible siting option being a new wireless communication facility tower or height modification request.

(4) Preferences. The City's preferences for locating new wireless communications facilities are as follows:

(a) Place antennas on existing structures, such as buildings, wireless communication facility towers, water towers, utility poles, or electrical transmission structures.

(b) Place wireless communication facilities in nonresidentially zoned districts and on nonresidential property.

(c) Place wireless communication facilities on public property and on appropriate rights-of-way; provided, that no obligation is created herein for the City to allow the use of City property or public right-of-way for this purpose. The placement of personal wireless communication facilities on City-owned property and public right-of-way will be subject to other applicable sections of the Covington Municipal Code and review by other City departments. A wireless communication facility mounted to any City-owned property, utility pole, or other structure shall be removed if the City deems removal is necessary for the undergrounding of utilities, the sale, development, or redevelopment of City-owned property, or the demolition or alteration of a City-owned building or other structure. The wireless communication facility shall be removed at no expense to the City.

(5) Restrictions on Light Poles and Standards. Light poles ~~and light standards~~ located within the public rights-of-way are prohibited from use as a wireless communication facility or for the attachment of an antenna. This restriction does not apply to wooden utility poles that have a light standard attached.

(6) Application Procedure. The applicant shall submit a completed application in a form established by the Director along with the initial application fee as set forth in the City's current fee resolution. The application shall contain such information as the Director may deem necessary or useful, and shall include:

(a) Type 1 Permit Requirements.

(i) A written description outlining the proposed project and an evaluation of how the proposal meets the City's code requirements;

(ii) Applicants who are not the property owner of record of the land and/or structure on which a wireless communication facility is to be located are required to have the application co-signed by the property owner(s) and provide a signed statement by the property owner(s) and/or building or structure owner(s) (if different) authorizing the submittal of the application by the applicant;

(iii) Plan sets prepared by a design professional that include a vicinity map, site map, architectural elevations, method of attachment, proposed screening, location of proposed antennas, and all other information which accurately depicts the proposed project and existing conditions or as otherwise determined necessary by the Director;

(iv) Written statement from a radio frequency engineer that demonstrates that the facility meets Federal Communications Commission requirements for allowed radio frequency emissions;

(v) A vicinity map depicting the proposed extent of the service area;

(vi) Critical areas study and proposed mitigation (if required);

(vii) If an outdoor generator is proposed, a report prepared by an acoustical engineer demonstrating compliance with Chapter 8.20 CMC, Noise Control; and

(viii) SEPA application (if required).

(b) Type 2. The applicant shall submit all of the information required for a Type 1 application, plus the following:

(i) Photo simulations that depict the existing and proposed view of the proposed facility;

(ii) Data sheet depicting the materials, textures, and colors proposed for use;

(iii) Landscaping plan prepared by a Washington State-licensed landscape architect (if required);

(iv) Service coverage area map (radio frequency (RF) modeling);

(v) If the facility is located within a residential zone, a report from a radio frequency engineer explaining the need for the proposed wireless communication facility. Additionally, the applicant shall provide detailed discussions on why the wireless communication facility cannot be located within a commercial or industrial/resource zone; and

(vi) Mailing labels for all property owners and tenants/residents within 500 feet of the subject property.

(c) Type 3. The applicant shall submit all of the information required for Type 1 and Type 2 applications, plus the following:

(i) All information required for new towers under CMC 18.70.130 and 18.70.140;

(ii) All information required for a height modification or setback modification request under CMC 18.70.150 and 18.70.160 respectively (if applicable);

(iii) The radio frequency engineer report shall include a discussion of the information required under CMC 18.70.050(16). The report shall also explain why a tower must be used instead of any of the other location options outlined in the table in subsection (2) of this section;

(iv) Engineering plans for the proposed tower, including a letter of certification by a licensed engineer that the proposed height and equipment comply with the requirements of this chapter;

(v) Evidence that the tower has been designed to meet the minimum structural standards for wireless communication facilities for a minimum of three providers of voice, video, or data transmission services, including the applicant, and including a description of the number and types of antennas the tower can accommodate;

(vi) A graphic simulation showing the appearance of the proposed tower and ancillary structures and ancillary facilities from five points within the impacted vicinity. Such points are to be mutually agreed upon by the Director and applicant. All plans and photo simulations shall include the maximum build-out of the proposed facility; and

(vii) Evidence of compliance with Federal Aviation Administration standards for height and lighting and certificates of compliance from all affected agencies. (Ord. 09-12 § 1 (Exh. A))

18.70.050 General requirements.

The following shall apply to all wireless communication facilities regardless of the type of facility:

(1) Noise. Any facility that requires a generator or other device that will create noise must demonstrate compliance with Chapter 8.20 CMC, Noise Control. A noise report prepared by an acoustical engineer shall be submitted with any application to construct and operate a wireless communication facility that will

have a generator or similar device. The City may require that the report be reviewed by an independent technical expert at the sole expense of the applicant.

(2) Business License Requirement. Any person, corporation, or entity that operates a wireless communication facility within the City shall obtain and maintain a valid Covington business license, issued annually by the City. Any person, corporation, or other business entity that owns a tower is also required to obtain and maintain a valid Covington business license.

(3) Signage. Only safety signs or those mandated by other public agencies may be located on wireless communication facilities. No other types of signs are permitted on wireless communication facilities.

(4) Parking. Any application must demonstrate that there is sufficient space for temporary parking for regular maintenance of the proposed facility.

(5) Finish. A tower shall either maintain a galvanized steel finish or, subject to the applicable standards of the FAA or FCC, be painted a neutral color so as to reduce its visual obtrusiveness.

(6) Design. Wireless communication facilities shall be screened or camouflaged by employing the best available technology. The design of all antennas, towers, support structures, buildings, and ancillary structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.

(7) Color. All antennas and ancillary wireless communication facilities located on buildings or structures other than towers shall be of a neutral color that is identical to or closely compatible with the color of the supporting structure so as to make the antenna and ancillary facilities as visually unobtrusive as possible.

(8) Lighting. Wireless communication facilities shall not be artificially lighted unless required by the FAA, FCC, or other applicable government authority. If lighting is required, the reviewing authority shall review the lighting alternatives and approve the design that would cause the least disturbance to the surrounding areas. No strobe lighting of any type is permitted on any tower.

(9) Advertising. No advertising is permitted at wireless communication facility sites or on any ancillary structures or facilities equipment compound.

(10) Ancillary Wireless Communication Facilities. All ancillary wireless communication facilities shall meet the underlying zoning district's setback requirements unless a zoning setback modification is granted pursuant to CMC 18.70.160.

(11) Equipment Enclosures. If feasible, equipment enclosures shall be located within existing buildings or located underground. If some other placement is proposed the applicant shall demonstrate to the satisfaction of the City that it is not feasible to locate the equipment below ground. All equipment and cabinets that will be visible to the traveling public, workers, or residents shall be as small and unobtrusive as is practicable and designed to blend in with existing surrounds. The applicant shall size any equipment enclosure and other facilities to minimize visual clutter. Each applicant shall be limited to an equipment enclosure of 360 square feet at each site. However, this size restriction shall not apply to enclosures located within an existing commercial, industrial, residential, or institutional building.

(12) Owner Approval. At the time of application the applicant must submit proof that they have contacted and received approval for the placement of the antenna at the specified location from the support structure owner (e.g., building, water tower, utility pole, electrical transmission structure, monopole) and, if different, the land owner upon which the structure is located.

(13) Building Standards. Wireless communication support structures shall be constructed so as to meet or exceed the most recent Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled: "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" (or equivalent), and as it may be updated or amended. Utility poles and transmission structures that are owned and/or maintained by the serving electric utility shall be designed to meet the National Electric Safety Code. Prior to issuance of a building permit the Building Official shall be provided with an engineer's certification that the support structure's design meets or exceeds the preceding applicable standards.

(14) Maintenance. Wireless communication carriers shall maintain their wireless communication facility in a good and safe condition. They shall preserve its original appearance and concealment, disguise, or camouflage elements incorporated into the design at the time of approval and in a manner which complies with all applicable Federal, State, and local requirements. Such maintenance shall include, but not be limited to, such items as painting, repair of equipment, and maintenance of landscaping.

(15) Critical Areas. Wireless communication facilities shall not be allowed in designated critical areas (except aquifer recharge areas) unless they are collocated on existing facilities.

(16) Radio Frequency Emissions. The applicant shall demonstrate that the wireless communication facility will comply with the radio frequency emission standards adopted by the Federal Communications Commission (FCC).

(17) State or Federal Requirements. All wireless communication facilities must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the State or Federal government

with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this section shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling State or Federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense. (Ord. 09-12 § 1 (Exh. A))

18.70.060 Landscaping/screening.

(1) The visual impacts of wireless communication facilities shall be mitigated and softened through landscaping or other screening materials at the base of the tower, equipment compounds, equipment enclosures, and ancillary structures, with the exception of wireless communication facilities located on electrical transmission structures, or if the antenna is mounted flush on an existing building or camouflaged as part of the building and ancillary equipment is housed inside an existing structure. The use of appropriate native plant species is encouraged. The Director or Hearing Examiner, as appropriate, may reduce or waive the standards for those sides of the wireless communication facility that are not in public view and when a combination of existing vegetation, topography, walls, decorative fences or other features achieve the same degree of screening as the required landscaping; or in locations where large wooded lots and natural growth around the property perimeter may be sufficient buffer.

(2) Landscaping shall be installed on the outside of fences associated with wireless communication facility equipment compounds and around equipment enclosures located at ground level. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping or screening requirements. The following requirements apply:

(a) Screening landscaping shall be placed around the perimeter of the equipment compound, except that a maximum 10-foot portion of the fence may remain without landscaping in order to provide access to the enclosure.

(b) The landscaping area shall be Type 1 landscaping as described in CMC 18.40.040(1) and a minimum of eight feet in depth around the perimeter of the enclosure in all zoning districts; except that Type II landscaping as defined in CMC 18.40.040(2) may be used in residential zoning districts and shall be a minimum of 10 feet in depth.

(c) The applicant shall utilize evergreens that shall be a minimum of six feet tall at the time of planting, unless located in a transmission or utility corridor where clearance requirements apply;

then landscaping that will be appropriate in size at maturity so as not to grow into the clear zone shall be planted.

(3) The applicant shall replace any unhealthy or dead plant materials in conformance with the approved landscaping development proposal plan and shall maintain all landscaping materials in a healthy growing condition for the life of the facility. Landscape areas shall be kept free of trash. (Ord. 09-12 § 1 (Exh. A))

18.70.070 Electrical transmission structure collocation – Specific development standards.
The following requirements shall apply to collocation of antennas on an existing electrical transmission structure (as defined in CMC 18.20.1256):

(1) Height. The height requirements for antennas that are collocated on electrical transmission structures is limited to 12 feet above the existing tower or pole height. If a replacement electrical transmission structure is proposed, the maximum height shall be no greater than 12 feet above the original electrical transmission structure's height.

(2) Antenna Aesthetics. There are no restrictions on the type of antenna(s) that may be collocated on the electrical transmission structure. The antenna(s) must be painted to match the color of the electrical transmission tower/pole.

(3) Antenna Intensity. There is no limit on the number of antennas that may be collocated on an electrical transmission structure.

(4) Feed Lines and Coaxial Cables. Feed lines and coaxial cables shall be attached to the existing pole or to one of the legs of the electrical transmission tower. The feed lines and cables must be painted to match the color of the electrical transmission structure. If a replacement structure is proposed the feed lines and coaxial cables shall be located within the structure or in a covered raceway of similar color and material to the tower or pole.

(5) Equipment Enclosures. Cabinet equipment shall be located directly under the electrical transmission tower where the antennas are located, or in a concealed location.

(6) Setbacks. Setback requirements shall not apply to wireless communication facilities collocated on an existing electrical transmission structure. (Ord. 09-12 § 1 (Exh. A))

18.70.080 Adding antennas to an existing wireless communication facility tower – Specific development standards.
The following requirements shall apply to adding antennas to existing wireless communication facility tower(s) (as defined in CMC 18.20.1284):

(1) Height. The height of the ~~antenna(s) must not exceed what was approved under the original application to construct the tower~~new or replacement antenna(s) may not constitute a "substantial change" as that term is defined in CMC 18.70.095. If the proposed antenna(s) height ~~shall exceed what was originally approved, a variance approval as a Type 3~~ constitutes a "substantial change," a Type 2 decision is required.

(2) Antenna Aesthetics. Antenna(s) shall be painted to match the color scheme of the tower. Antenna mounts shall be flush-mounted onto the existing tower; unless it is demonstrated through radio frequency (RF) propagation analysis that flush-mounted antennas will not meet the network coverage objective.

(3) Antenna Intensity. There is no limit on the number of antennas that may be located on an existing tower.

(4) Feed Lines and Coaxial Cables. Feed lines and coaxial cables shall be located within the tower. Any exposed feed lines or coaxial cables (such as when extended out of the tower to connect to the antennas) must be painted to match the tower.

(5) Equipment Enclosures. Any new cabinet or equipment shall be located within the equipment enclosure that was approved as part of the original application. If the applicant wishes to expand the equipment enclosure or compound from what was approved by the City or County under a previous application, the application shall ~~seek~~ either apply for an eligible facilities request under CMC 18.70.095 or shall submit a wireless communication facility (Type 2) application for only the equipment enclosure increase.

(6) Setbacks. Setback requirements shall not apply when an applicant installs new antennas on an existing tower and uses an existing equipment enclosure. If the equipment enclosure is increased it must meet the setback requirements for the underlying zoning district and may not exceed the total area restrictions for equipment enclosures as set forth in CMC 18.70.050. (Ord. 09-12 § 1 (Exh. A))

18.70.090 Utility pole collocation – Specific development standards.

The following requirements shall apply to all wireless communication facilities collocated on a utility pole (as defined in CMC 18.20.1351):

(1) Height. The antenna height of a utility pole collocation is limited to 12 feet above the existing utility pole ~~and may not be greater than 50 feet in total height in residential zones~~.

(2) Antenna Aesthetics. The first preference for any collocation is to utilize flush-mounted antennas. If the utility pole collocation includes an antenna array, the array shall be painted to match the support structure

and shall be flush mounted within six inches of the support structure. If it is demonstrated through RF propagation analysis that six-inch flush-mounted antennas will not meet the network coverage objective, then the distance may be increased up to 12 inches or may be contained in a canister that is a continuation of the diameter of the support structure.

(3) Replacement Pole. An existing utility pole may be removed and replaced with a new utility pole so long as the replacement pole is of similar color and material as the existing, and adjacent, pole(s) and is located within 10 feet of the existing pole (measured from the center point of the existing pole to the center point of the replacement pole). The replaced utility pole must be used by the owner of the utility pole to support its utility lines. A replacement utility pole shall be designed such that coaxial cables and feed lines can be located within the pole or in a covered raceway of similar color and material as the pole. If the replacement utility pole has a light standard then a photometric analysis shall be provided with the application. Such application shall only be approved if the replaced pole can maintain the appropriate lighting in the right-of-way.

(4) Coaxial Cables and Feed Lines. Coaxial cables limited to one-half-inch diameter may be attached directly to an existing utility pole. Coaxial cables greater than one-half inch must be placed within the utility pole or within a covered raceway of similar color and material as the existing pole. The size of the cables is the total size of all coaxial cables being utilized on the utility pole.

(5) Pedestrian Impact. The proposed wireless communications facility collocation shall not result in a significant change in the pedestrian environment or preclude the City from making pedestrian improvements. If a utility pole is being replaced, consideration must be made to improve the pedestrian environment, if necessary.

(6) Equipment Enclosures. Unless approved by the Director of Public Works, all equipment enclosures must be placed outside of the City right-of-way. Equipment enclosures shall be located underground consistent with CMC 18.70.050(11).

(7) Setbacks. Any portion of the wireless communication facilities located within City right-of-way is not required to meet setback requirements if it is located underground. The City will evaluate setback modifications on private property under the setback requirements set forth in CMC 18.70.160. (Ord. 09-12 § 1 (Exh. A))

(8) Small Wireless Facilities. Any proposed wireless communication facility that qualifies as a small wireless facility pursuant to CMC Chapter 18.70A shall apply for a small wireless facility permit under CMC Chapter 18.70A.

18.70.095 Eligible Facilities Request

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this CMC Section 18.70.095.

1. "Base Station": A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:

a. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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

c. Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subparagraph (a) and (b) 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.

d. The term does not include any structure that, at the time the Eligible Facilities Request application is filed with the City, does not support or house equipment described in subparagraph (1)(a) and (1)(b) above.

2. "Collocation": 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.

3. "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:

a. Collocation of new transmission equipment;

b. Removal of transmission equipment; or

c. Replacement of transmission equipment.

4. "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.

5. "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 approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

6. "Substantial Change": A modification substantially changes 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;

(i) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height 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 Section 6409(a) of the Spectrum Act as part of the Middle Class Tax Relief and Job Creation Act of 2012.

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 (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) 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;

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

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

f. 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.

7. "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.

8. "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 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.

B. Application. The City shall prepare and make publicly available an application form used to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

C. Qualification as an Eligible Facilities Request. Upon receipt of an application for an Eligible Facilities Request, the Director shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

D. Timeframe for Review. Applications for an Eligible Facilities Request are subject to a Type 1 Decision and shall be approved within sixty (60) days of the date on which an applicant submits an

Eligible Facilities Request application, unless the Director determines that the application is not covered by CMC Section 18.70.095.

E. Tolling of the Time Frame for Review. The sixty (60) day review period begins to run when the application is filed and may be tolled only by mutual agreement by the City and the applicant or in cases where the City determines that the application is incomplete. The timeframe for review of an Eligible Facilities Request is not tolled by a moratorium on the review of applications.

1. To toll the timeframe for incompleteness, the City shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.

2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

3. Following a supplemental submission, the City will notify the applicant within ten (10) days 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 sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

F. Determination That Application Is Not an Eligible Facilities Request. If the City determines that the applicant's request does not qualify as an Eligible Facilities Request, the City shall deny the application.

G. Failure to Act. In the event the City fails to approve or deny a request for an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

18.70.100 Building-mounted concealed facility – Specific development standards.

The following requirements shall apply to wireless communication facilities that are attached to an existing building and concealed from view (as defined in CMC 18.20.1428):

(1) Height. The proposed concealed wireless communication facility must meet the height requirement of the underlying zoning district. Antennas may be located in existing church spires, clock towers, chimneys, water towers, elevator towers, mechanical equipment rooms, or other similar rooftop appurtenances

usually required to be placed above the roof level and not intended for human occupancy or the provision of additional floor area. Stand-alone antennas or towers shall not qualify as rooftop appurtenances.

(2) Antennas Aesthetics. Antennas must be concealed from view by blending with the architectural style of the building. This could include, but not be limited to, steeple-like structures and parapet walls. The screening must be made out of the same material and be the same color as the building. Antennas shall be painted to match the color scheme of the building(s).

(3) Feed Lines and Coaxial Cables. Feed lines and coaxial cables shall be located below the parapet of the rooftop.

(4) Cabinet Enclosure. If a cabinet enclosure cannot be located within the building where the wireless communication facilities will be located, then the City's first preference is for the wireless telecommunication carrier to locate the equipment on the roof of the building. If the equipment can be screened by placing the equipment below the parapet walls, no additional screening is required. If screening is required, the proposed screening must be consistent with the existing building in terms of color, design, architectural style, and material. If the cabinet equipment cannot be located on the roof or within the building then it shall be located underground consistent with CMC 18.70.050.

(5) Setbacks. The proposed wireless communication facilities must meet the setback requirements of the applicable zoning category where the facility is to be located. (Ord. 09-12 § 1 (Exh. A))

18.70.110 Request to use nonconcealed facilities attached to a building in lieu of a concealed building attachment.

The use of concealed building facilities shall have first priority in all residential and commercial zones. However, an applicant may request to construct a nonconcealed building-attached wireless communication facility in lieu of a concealed wireless communication facility. The Director will use the following criteria to determine whether to allow this request:

(1) Due to the size of the building and the proposed location of the antennas, the visual impact of the exposed antennas will be minimal in relation to the building.

(2) Cables are concealed from view and any visible cables are reduced in visibility by sheathing or painting to match the building where they are located.

(3) Equipment enclosure is adequately screened from view.

(4) Due to the style or design of the building the use of a concealed facility would reduce the visual appearance of the building.

(5) The proposal meets the development standards of CMC 18.70.120. (Ord. 09-12 § 1 (Exh. A))

~~13.~~18.70.120 Nonconcealed building-mounted specific development standards. SHARE

The following requirements shall apply to wireless communication facilities that are attached to an existing building and not concealed from view (as defined in CMC 18.20.1427):

(1) Height. The proposed facility must meet the height requirement of the underlying zoning category. If the building where the facility is located is at or above the maximum height requirements, the nonconcealed antennas are permitted to extend a maximum of three feet above the existing roof line.

(2) Antenna Aesthetics. The first preference for any proposed facility is to utilize flush-mounted antennas. Nonflush-mounted antennas may be used when their visual impact will be negated by the scale of the antennas to the building. Shrouds, canisters or other visually opaque, radio-frequency transparent materials which hide the wireless antennas from public view are not required unless they provide a better visual appearance than exposed antennas. Antennas shall be painted to match the color scheme of the building(s).

(3) Feed Lines and Coaxial Cables. Feed lines and coaxial cables should be located below the parapet of the rooftop. If the feed lines and cables must be visible they must be painted to match the color scheme of the building(s).

(4) Equipment Enclosures. If cabinet equipment cannot be located within the building where the wireless communication facilities will be located, then the City's first preference is to locate the equipment on the roof of the building. If the equipment can be screened by placing the equipment below the parapet walls, no additional screening is required. If screening is required, the proposed screening must be consistent with the existing building in terms of color, design, architectural style, and material. If the equipment enclosure cannot be located within the building or on the roof and is located on the ground, the enclosure shall be fenced with a six-foot-tall fence. The fence shall include slats, wood panels, or other materials to screen the equipment from view. (Ord. 09-12 § 1 (Exh. A))

18.70.130 Requests for new towers.

(1) New towers are not permitted within the City unless the Hearing Examiner finds that the applicant has demonstrated by a preponderance of the evidence that:

~~(a) Coverage Objective. There exists an actual (not theoretical) significant gap in service and the proposed wireless communication facility will eliminate such significant gap in service; and~~

(a) Failure to permit a new tower will prohibit or have the effect of prohibiting the provision of personal wireless services;

~~(b) Alternates. No existing tower, structure, other feasible site, or other alternative technologies not requiring a new tower in the City can accommodate the applicant's proposed wireless communication facility; and~~

~~(c) Least Intrusive.~~ (b) The proposed new wireless communication facility is designed and located ~~to remove the significant gap in service in a manner that is, in~~ with consideration of the goals, policies, objectives, standards and regulations set forth in this chapter, CMC Title 18, and the comprehensive plan~~, the least intrusive upon the surrounding area.~~; and

(c) That the application complies with CMC 18.70.140.

(2) The Hearing Examiner is the reviewing body on the application to construct a new tower and shall determine whether or not each of the above requirements is met. Examples of evidence the applicant shall provide demonstrating the foregoing requirements include, but are not limited to, the following:

(a) That the tower height is the minimum necessary in order to achieve the ~~coverage~~ technical service objective;

(b) That no existing and available towers or structures or alternative sites are located within the geographic area ~~required~~ available to meet the applicant's engineering requirements ~~to meet its coverage~~ or technical service objective (regardless of the geographical boundaries of the City);

(c) That the existing and available towers or structures are not of a sufficient height or could not feasibly be extended to a sufficient height to meet the applicant's engineering requirements to meet its ~~coverage~~ service objective;

(d) That the existing and available structures or towers do not have sufficient structural strength to support the applicant's proposed antenna and ancillary facilities;

(e) That the applicant's proposed antenna would cause electromagnetic interference with the antenna on ~~the~~ existing towers or structures, or the antenna on the existing ~~structure~~ towers or structures would cause interference with the applicant's proposed antenna; and

~~(f) That an alternative technology that does not require the use of a new tower, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireless system, is unsuitable. Costs of alternative technology that exceed the new tower or antenna development shall not be presumed to render the technology unsuitable; and~~

~~(g~~(f) The applicant demonstrates other limiting factors that render existing towers and structures or other sites ~~or alternative technologies~~ unsuitable.

(3) The Hearing Examiner, after holding a public hearing, shall approve, approve with conditions, or deny the application, or remand the application back to staff for further investigation in a manner consistent with the Hearing Examiner's order. (Ord. 09-12 § 1 (Exh. A))

18.70.140 Tower-specific development standards.

The following requirements shall apply to all wireless communication towers (as defined in CMC 18.20.1284):

(1) Height. Any proposed tower with antennas shall ~~meet~~ not exceed the minimum height needed to meet the coverage/capacity objectives and may not exceed more than 10 feet above the height standards of the zoning district where the tower will be located. A height modification may be applied for under CMC 18.70.150.

(2) Antenna and Tower Aesthetics. The applicant shall utilize a concealed facility as defined in CMC 18.20.1428. The choice of concealing the wireless communication facility must be consistent with the overall use of the site. For example, having a tower appear like a flagpole would not be consistent if there are no buildings on the site. If a flag or other wind device is attached to the pole, it must be appropriate in scale to the size and diameter of the tower.

(3) Setbacks. The proposed wireless communication facilities must meet the setback requirements of the underlying zoning district. If a height modification is granted under CMC 18.70.150, the setback of the proposed wireless communication facility shall increase two feet for every foot in excess of the maximum permitted height in the zoning district.

(4) Color. The color of the tower shall be based on the surrounding land uses and type of concealment proposed.

(5) Feed Lines and Coaxial Cables. All feed lines and coaxial cables must be located within the tower. Feed lines and coaxial cables connecting the tower to the equipment enclosure, which are not located within the wireless communication facility equipment compound, must be located underground.

(6) Tower Design. Any new tower constructed shall be designed to meet the minimum structural standards for future collocation of wireless communication facilities by a minimum of three providers (including the applicant) of voice, video, or data transmission services. (Ord. 09-12 § 1 (Exh. A))

18.70.150 Height modification.

(1) Where the Hearing Examiner finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the height limitations of the underlying zoning district, or the purpose of these regulations may be served to a greater extent by an alternative proposal, it may approve a height modification to the zoning code height limit; provided the applicant demonstrates that the modification will meet the goals, policies, objectives, standards, and requirements of this chapter, CMC Title 18, and the comprehensive plan, and demonstrates the following:

(a) The granting of the height modification will not be detrimental to public safety, health, or welfare, or injurious to other property, and will promote the public's interest; and

(b) A particular and identifiable hardship exists or a specific circumstance warrants the granting of a modification. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

(i) Topography and other site features;

(ii) Availability of alternative site locations;

(iii) Geographic location of property; and

(iv) Size/magnitude of the project being evaluated and availability of collocation.

(2) In approving the height modification request, the Hearing Examiner may impose such conditions as he deems appropriate to substantially secure the goals, policies, objectives, standards, and requirements of this chapter, CMC Title 18, and the comprehensive plan.

(3) A request for any such modification shall be submitted in writing by the applicant with the application for Hearing Examiner review. The applicant shall state fully the grounds for the modification and all of the facts relied upon by the applicant. (Ord. 09-12 § 1 (Exh. A))

18.70.160 Setback modification.

(1) Wireless communication facilities must meet the setback requirements of the underlying zoning district.

(2) The Director or Hearing Examiner, depending on the type of application, may permit modifications to be made to setback requirements when:

(a) An applicant for a wireless communication facility can demonstrate that placing the facility on certain portions of a property within the required setback will provide better screening and aesthetic considerations than provided under the existing setback requirements; or

(b) The modification will aid in retaining open space and trees on the site; or

(c) The proposed location allows for the wireless communication facility to be located at a greater distance from residentially zoned properties.

(3) Zoning setback modifications shall not be used to reduce any setback required under the State Building Code or Fire Code. (Ord. 09-12 § 1 (Exh. A))

18.70.170 Expiration.

Any application to install or operate a wireless communication facility shall expire exactly one year from the date of issuance of the Director or Hearing Examiner's decision, unless significant progress has been made to construct the facility. The City may extend the expiration period by up to one additional year due to circumstances outside of the control of the applicant. However, the City shall not issue an extension if any revisions have occurred to the City's Municipal Code that would affect the wireless communication facility approved. (Ord. 09-12 § 1 (Exh. A))

18.70.180 Removal of abandoned wireless communication facilities.

Any antenna or tower that, after the initial operation of the facility, is not used for the purpose for which it was intended at the time of filing the application for a continuous period of 12 months shall be considered abandoned. The wireless telecommunication carrier of such abandoned antenna or tower and ancillary wireless communication facilities shall remove the same within 90 days of receipt of a notice from the City notifying the owner or operator of such abandonment. Whenever a facility is abandoned or ceases operation, the entire facility shall be removed, including, but not limited to, all antennas, antenna supports, feeder lines, base stations, electronic equipment, and the concrete pad upon which the structure is located. Failure to remove such an abandoned facility shall result in declaring the antenna and/or tower a public nuisance. If there are two or more users of a single tower, then this section shall not become effective until all users cease using the tower. (Ord. 09-12 § 1 (Exh. A))

Sources	
Original Document	[#1885821.DOCX] [v1] Chapter 18.DOCX
Modified Document	[#1885821.DOCX] [v4] Covington Chapter 18.DOCX

Comparison Statistics	
Insertions	53
Deletions	20
Changes	13
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	86

Word Rendering Set Markup Options	
Name	Standard
Insertions	
~~Deletions~~	
Moves / ~~Moves~~	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True