ORDINANCE NO. O-4853

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE USE OF RIGHT OF WAY FOR TELECOMMUNICATIONS PURPOSES AND REPEALING AND REENACTING TITLE 26 OF THE KIRKLAND MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION; FILE NO. CAM23-00041.

WHEREAS, the City Council did confer with the Kirkland Planning Commission regarding the repeal and replacement of Title 26 of the Kirkland Municipal Code related to the regulation of telecommunication facilities in City rights-of-way, so as to make Title 26 consistent with recent mandates from federal and state agencies with respect to telecommunications law, and also consistent with changes to the City's Zoning Code, Chapter 117, regarding wireless service facilities, Ordinance No. O-4852; and

WHEREAS, in a public meeting on June 20, 2023, the City Council considered the environmental documents received from the responsible official, together with the report and recommendation of the Planning Commission; and

WHEREAS, the City Council recognizes that this change to the Municipal Code is consistent with Comprehensive Plan land use policies.

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

Section 1. Title 26 of the Kirkland Municipal Code is hereby repealed.

Section 2. A new Title 26 of the Kirkland Municipal Code, entitled "Telecommunications Franchises" is hereby adopted as set forth below:

Title 26

TELECOMMUNICATIONS FRANCHISES

Chapter 26.04

PURPOSE AND SCOPE

26.04.010 Purpose and scope.

1. The purpose of this title is to:

   (a) Permit and manage reasonable access to the rights-of-way of the City for telecommunications purposes on a nondiscriminatory basis.

(b) Establish clear and nondiscriminatory local guidelines and standards for the exercise of local authority with respect to the regulation of right-of-way use.

(c) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City.

(d) Promote competition in telecommunications.

(e) Conserve and manage the limited physical capacity of the rights-of-way held in public trust by the City.

(f) Ensure that all telecommunications providers within the City comply with the applicable ordinances, rules and regulations of the City.

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

(h) Enable the City to discharge its public trust consistent with rapidly evolving federal and state legal and regulatory policies, industry competition and technological development.

Chapter 26.08

DEFINITIONS AND RULES OF CONSTRUCTION

26.08.010 Rules of construction.

1. For the purposes of this title, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Chapter 117 KZC, as amended; Title 47 of the United States Code, as amended; and Chapter 35.99 RCW, as amended. Words not defined therein shall have their common and ordinary meaning.
2. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; the masculine gender includes the feminine gender, and vice versa.
3. The words "shall" and "will" are mandatory, and "may" is permissive.
4. The term "written" shall include electronic documents.

26.08.020 Defined terms.

1. "Applicant" means any person submitting an application for a franchise under this Title.
2. "City" means the City of Kirkland, Washington.
3. "City manager" means the City Manager or designee.
4. "City property" means all real property now or hereafter owned by the City whether in fee ownership or other interest.
5. "Claims" means all actions, costs, damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, suits, fees, attorneys' fees, and costs.

6. "Department" means the Department of Public Works.
7. "Director" means the Director of the Department of Public Works or designee.
8. "Franchise" means an agreement whereby the City grants general permission to a service provider to use and occupy the right-of-way for the purpose of locating facilities. For the purposes of this Title, the term "franchise" includes franchises as described in RCW 35A.47.040 and "master permits" as defined in RCW 35.99.010. In addition, the term "franchise" does not include cable television franchises and permits which are separately regulated under Chapter 7.61 KMC.
9. "Grantee" means the person, firm, or corporation to whom or which a franchise, as defined in this section, is granted by the City Council under this Title and the lawful successor, transferee or assignee of such person, firm or corporation.
10. "Grantor" means the City of Kirkland acting through its City Council.
11. "Obstruction" means any object or structure that blocks or impedes the construction or maintenance of public works including private facilities that provide telecommunications services to customers; shrubbery or plants of any kind; and storage materials.
12. "Overhead facilities" means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.
13. "Person" means corporations, companies, associations, firms, partnerships, limited liability companies, government entities, other entities and individuals.
14. "Public right-of-way" or "Rights-of-way" means land acquired or dedicated for public roads and streets. It does not include:

    a. state highways;

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

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

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

    e. Lands owned or managed by the state Parks and Recreation Commission;

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

    g. Parks or other public property not used as a public right-of-way including but not limited to the Cross Kirkland Corridor.

15. "Right-of-way work permit" means the authorization by which the City grants permission for a person to temporarily conduct work or other activities on a specified street, sidewalk, curb, or other area within the public rights-of-way.
16. "State" means the State of Washington.

17. "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.
18. "Telecommunications facilities" or "Facilities" means all of the plant, equipment, fixtures, appurtenances, antennas, electronics, radios and other facilities necessary to furnish and deliver Telecommunications services, including, but not limited to, poles, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults and all attachments, appurtenances and appliances necessary or incidental to the transmission, reception, distribution, provision, offering and use of Telecommunications services.
19. "Telecommunications provider" or "provider" means and includes every corporation, company, association, joint stock association, firm, partnership, person, city or town owning, operating or managing any facilities used to provide and providing telecommunications for hire, sale or resale to the general public. This definition includes entities providing infrastructure, including but not limited to fiber, conduit, poles, or other structures to another service provider, but does not include electrical utility entities. This further includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city or town.
20. "Telecommunications service" is defined consistently with RCW 35.99.010(7). 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 but does not include "cable service" as that term is defined in Chapter 7.61 KMC.
21. "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.
22. "Washington Utilities and Transportation Commission" or "WUTC" means the State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.
23. "Wireline" means communications using conducted electromagnetic or optical emissions by, over, or within a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

Chapter 26.12

APPLICABILITY

26.12.010 Applicability.

1. This Title applies to all persons who desire to locate, or have located, telecommunication facilities in the City's rights-of-way. Additionally:

   (a) Any person desiring to locate telecommunications facilities in the right-of-way shall apply for and receive a franchise pursuant to KMC 26.12.020.

   (b) Any person, whether or not they have obtained a franchise, who desires to conduct work in the right-of-way shall apply for and receive a right-of-way work permit pursuant to KMC Title 19.

   (c) Any person desiring to locate a small wireless facility or a macro facility anywhere in the City shall apply for and receive the applicable WSF permit pursuant to KMC Chapter 117.

   (d) Any person who desires to attach a WSF, or any associated equipment, on City property, at a specific site in the right-of-way, or to any structure owned by the City shall include an application for a license agreement or site-specific agreement as a component of its WSF permit application. Master license agreements, including for access to multiple City-owned poles or for public property, or City-owned structures outside the right-of-way, shall be submitted to the City Council for approval. Site-specific agreements for the use of a specific City-owned pole or for a specific location inside the right-of-way shall be submitted to the Director for approval.

26.12.020 Franchise.

1. The City may grant any person, by ordinance, a nonexclusive franchise to install, construct, operate, maintain, remove, repair or replace facilities in the right-of-way for the provision of telecommunications services to the public. The grant of a franchise shall be made pursuant to the procedures, terms, and conditions set forth in this Title; provided that, the City may accept different terms when required by law. No provision of this Title requires the granting of a new franchise if, in the opinion of the City Council, the granting of an additional franchise is not in the public interest, unless otherwise required by law.
2. Except as set forth in KMC 26.12.020(3), it is unlawful for any person to install, construct, operate, maintain, remove, repair or replace facilities in the right-of-way for the provision of telecommunications services or cable without first obtaining a franchise pursuant to this Title if for telecommunication services or a franchise pursuant to Chapter 7.61 KMC if for cable services.
3. Any person that shows that the State of Washington has granted it the right to operate within the City's rights-of-way without the City's consent may, but is not required to, obtain a franchise pursuant to this title. A person asserting such a state grant, consistent with RCW 35.99.010, shall provide the City with a statement, and supporting

documentation, detailing the basis for the assertion of a state-wide grant.

Chapter 26.20

FRANCHISES

26.20.010 Authority granted by franchise.

1. A franchise authorizes the grantee to use the rights-of-way, and only the rights-of-way, for a specified purpose. Use of City property other than the rights-of-way, including any use of City poles or other facilities, requires a separate site license or lease from the City.

2. A franchise shall state the specific purpose for which it authorizes the applicant to use the rights-of-way. The issuance of a franchise does not relieve the applicant from obtaining any other legal authority that may be necessary to use the rights-of-way for any other purpose.

26.20.020 Application to existing franchise ordinances, agreements, leases, and permits – Effect of other laws.

1. Except as otherwise provided herein or permitted by applicable federal or state law, this Title shall have no effect on any franchise, franchise ordinance, franchise agreement, lease, permit, or other authorization existing on or before the effective date of the ordinance codified in this Title, to use or occupy public rights-of-way or City property until:

   (a) The expiration of said franchise, franchise ordinance, franchise agreement, lease, permit, or authorization; or

   (b) The amendment to an unexpired franchise, franchise ordinance, franchise agreement, lease, permit, or authorization, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

2. Nothing in this Title shall be deemed to create an obligation upon any person that the City is forbidden to require pursuant to federal, state, or other law.

26.20.030 Applications for franchises.

Applications for new franchises shall be submitted to the Department and shall include the following information:

1. Applicant's name, address, and telephone number and the name, address and telephone number of the duly authorized officer or employee of the applicant. If the application is submitted by an agent of the applicant (i.e., by someone other than a duly authorized officer or employee of the applicant), the following information shall also be provided: (i) the agent's name, address and telephone number; and

(ii) documentation of the agent's authority to submit the application on behalf of the applicant.

2. Applicant's business structure, e.g., corporation, limited liability company, partnership, sole proprietorship.
3. Identification of the service area for which the franchise is requested, including a map of the area to be covered by the franchise and, if known, specific locations of the initial build-out and proposed future build-out locations, including which proposed facilities will be underground, ground based or aerial. A citywide franchise area may be requested.
4. Description of the services that the applicant expects to provide within the City, including whether the services will be provided to the general public, to commercial and/or residential customers, or to other utilities or telecommunications providers.
5. Description of the type(s) of facilities to be installed in the right-of-way.
6. To the extent locations for installations are known, preliminary engineering plans, specifications and a map showing where the facilities are to be located within the City, all in sufficient detail to identify:
    (a) The location and/or route requested for the applicant's proposed facilities;
    (b) The location of applicant's overhead and underground facilities, other lines and equipment in the rights-of-way in the proposed location and/or along the proposed route;
    (c) The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
7. If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights–of-way and to the extent specific locations are known:
    (a) The location proposed for the new ducts or conduits;
    (b) Evidence that there is sufficient capacity within the rights-of-way for the proposed facilities.
8. A preliminary construction schedule and completion date.
9. Evidence that the applicant is registered to participate in the one-number locator service, as described in RCW Chapter 19.122, if applicable.
10. If the applicant is proposing small wireless facilities, an accurate map showing the existing locations, if any, of any existing small wireless facilities in the rights-of-way, owned or operated by the applicant.
11. An application fee which shall be set by the City Council to recover City costs in accordance with applicable federal and state law.
12. Description of applicant's previous experience providing the proposed services and facilities, including an illustrative list of other franchises awarded applicant in the State of Washington.
13. The name, address and telephone number of any person, other than applicant, who will have any ownership interest in the proposed facilities.

14. Proof that applicant possesses all governmental licenses, certificates or authorizations that are necessary to lawfully conduct the proposed franchise activities.
15. Explanation of whether applicant-proposed services or any portion thereof will be subject to tax under Chapter 5.08 KMC.
16. Information demonstrating applicant's financial capacity to construct, maintain and operate the proposed franchise facilities in compliance with the requirements of this Title, as may be shown by its operations in other cities, financial statements, or other means.
17. A statement as to whether applicant has had any franchise revoked or been held to be in violation of any franchise and, if so, a full explanation of the reasons for such violation and/or revocation and the steps taken by the applicant to cure all resulting harms and prevent their reoccurrence.
18. Such other information as the department shall deem appropriate.

26.20.040 Determination by City.

1. Within the time periods established by state and/or federal law, as applicable, after receiving a complete application hereunder, the City Council shall grant or deny a franchise application. If the City Council denies a franchise, such denial must be based on one of the following:

    (a) The capacity of the rights-of-way to accommodate the applicant's facilities;
    (b) The capacity of the rights-of-way to accommodate additional facilities if the application is granted;
    (c) The damage or disruption, if any, to public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;
    (d) The public interest in minimizing the cost and disruption of construction within the rights-of-way;
    (e) The availability of alternate routes or locations that are reasonable for placement of the proposed facilities;
    (f) Such other factors as may relate to the City's authority to manage, regulate and control public rights-of-way.

2. If the application is denied, the determination shall include the reasons for denial. Denial of a franchise shall be supported by substantial evidence contained in a written record.
3. If the application is approved, the City shall issue the franchise as a written document with any conditions necessary to preserve and maintain the public health, safety, welfare, and convenience.

26.20.050 Acceptance.

1. No franchise granted hereunder shall be effective until it has been approved by the City Council by ordinance and the applicant has accepted the franchise, in writing, in a form acceptable to the City.
2. Either before the franchise is presented to City Council or within 60 days after the effective date of the ordinance or other City action granting a franchise, or within such extended period of time as may

be authorized by the City, the applicant shall file written acceptance of the franchise, together with the bonds, certificate(s) of insurance policies, and security fund required by this KMC 26.40.050. Acceptance of a franchise shall consist of executing the written agreement granting the franchise and returning said franchise to the City within the period of time specified herein.

3. All franchises granted pursuant to this Title shall contain substantially similar terms and conditions.

26.20.060 General conditions of franchises.

1. A franchise shall be nonexclusive.
2. No franchise shall be in effect for a term of more than five years, unless a different term is expressly specified in the franchise.
3. The franchise shall authorize the grantee to use only those specific portions of the rights-of-way indicated in the franchise. The franchise area may include all rights-of-way within the city limits.
4. In accepting any franchise, the grantee acknowledges that its rights thereunder are subject to the lawful exercise of the police power and zoning power of the City to adopt and enforce ordinances necessary to protect the safety and welfare of the public, and it agrees to comply with all applicable laws enacted by the City pursuant to such powers.
5. No franchise shall convey any right, title or interest in rights-of-way, but shall be deemed an authorization only to use and occupy the rights-of-way for the limited purposes and term stated in the franchise.
6. No franchise shall excuse the grantee from securing any further easements, leases, permits or other approvals that may be required to lawfully occupy and use rights-of-way.
7. No franchise shall be construed as any warranty of title.
8. The provisions of this Title shall be incorporated by reference in any franchise approved hereunder. However, in the event of any conflict between this Title and the franchise, the franchise shall be the prevailing document.
9. If a franchise expires, the franchise shall continue on a month-to-month basis until either party requests to terminate or amend the franchise.

26.20.070 Amendment of franchise.

1. If a grantee wishes to modify the conditions of the franchise, including the portions of the rights-of-way it is authorized to use and occupy, the grantee shall submit such amendment request in writing to the Director. Upon the Director's recommendation of approval or denial, the amendment request shall be submitted to City Council for review and determination.
2. If a grantee is ordered by the City to locate or relocate its facilities in rights-of-way not included in a previously granted franchise, the City shall grant an amendment making that change without further application.

26.20.080 Renewal of franchise.

1. A grantee that wishes to renew its franchise hereunder shall, not more than one hundred eighty days nor less than ninety days before the expiration of the current franchise, submit an application to the City for renewal on a form prepared by the Director.
2. No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise, or of the requirements of this Title, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.
3. After receiving a complete application for franchise renewal, the City shall determine whether to grant or deny the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reasons for nonrenewal. Prior to granting or denying the renewal of a franchise under this Article, the City Council shall consider the following:
    (a) The applicant's compliance with the requirements of this Title and the franchise.
    (b) Applicable federal, state and local laws, rules and policies.
    (c) Such other factors as may demonstrate that the continued grant to use the rights-of-way will be in the best interests of the community.

26.20.090 Personal wireless service facilities in rights-of-way.

1. The City may impose a site-specific charge consistent with applicable law and pursuant to an agreement with a personal wireless service provider for:

    (a) The placement of new facilities in the right-of-way regardless of height, including underground facilities, unless the new facility is the result of a City-mandated relocation, in which case the City will not charge the personal wireless service provider if the previous location was not charged.

    (b) The placement of replacement structures when the replacement is necessary for the installation or attachment of facilities, and the overall height of the replacement structure and the facility is more than sixty feet.

    (c) The placement of new facilities on structures owned by the City located in the right-of-way.

2. The City is not required to approve a franchise for the placement of facilities that meets one of the criteria in this section absent such an agreement. If the parties are unable to agree on the amount of the charge, the personal wireless service provider may submit the amount of the charge to binding arbitration by serving notice on the City. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving rights-of-

way and consistent with applicable law. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location and zoning requirements. Costs of the arbitration, including compensation for the services of the arbitrator(s), must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses in connection with the arbitration proceeding.

26.20.100 Use of poles and conduit.

1. The City may, in accordance with RCW 35.99.070 and any other applicable law, require a telecommunications provider that is constructing, relocating or placing ducts or conduits in the rights-of-way to provide the City with additional duct or conduit and related structures necessary to access the conduit.
2. Subject to such reasonable rules and regulations as may be prescribed by the pole owner and subject to the limitations prescribed by RCW 70.54.090 or any other applicable law, the City may post City signs on a pole owner's poles within the City.
3. Subject to the pole owner's prior written consent, which may not be unreasonably withheld, the City may install and maintain City-owned overhead wires upon an owner's poles, in the right-of-way subject to the following:

    (a) Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as the pole owner may specify from time to time (including, without limitation, requirements accommodating its facilities or the facilities of other parties having the right to use the pole);

    (b) The pole owner shall have no indemnification obligations in connection with any City-owned wires so installed and maintained;

    (c) The pole owner shall not charge the City a fee for the use of such poles in accordance with this section as a means of deriving revenue therefrom; provided, however, that nothing herein shall require the pole owner to bear any cost or expense in connection with such installation and maintenance by the City.

    (d) The pole owner shall not enter into an agreement with a third person which would require the pole owner to exclude the City or any other person from use of such poles.

    (e) The pole owner may not condition the City's use of such poles on the City's acceptance of limitations on the purpose or use of the City's facilities.

26.20.110 Abandonment.

1. A grantee that has determined to discontinue its operations in the City must submit to the City, within 90 days of the planned date for discontinuance of operation, a proposal and instruments for

transferring ownership of its facilities to the City. If a grantee proceeds under this clause, the City may at its option:

(a) Accept assignment of the facilities; or

(b) Require the grantee, at its own expense, to remove the facilities.

2. Facilities of a grantee who fails to comply with the preceding subsection and which, for 120 days, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. After the lapsing of such 120 days and upon 30 days' notice to the grantee, the City may exercise any remedies or rights it has at law or in equity, including but not limited to:

(a) Abating the nuisance; and

(b) Requiring removal of the facilities at the expense of the grantee.

Chapter 26.28

INSPECTION, REPORTS AND NOTICE

26.28.010 Inspection of right-of-way construction and restoration activities.

1. The Director may inspect all right-of-way construction and restoration activities and conduct any tests that the Director finds necessary to ensure compliance with the terms of this Title and any other applicable law or agreements.
2. A grantee shall allow the Director to make such inspections referred to in subsection (a) of this section at any time. Absent an emergency, the City shall give the grantee reasonable notice of the inspection of at least 24 hours.

26.28.020 Maps.

Upon request by the City, a grantee shall, within 10 business days, submit to the City, at no cost to the City, the grantee's most current and accurate record drawings in use by the grantee showing the location of grantee's facilities, specified by the City in its request. Record drawings shall show all facilities including but not limited to power poles, guy poles and anchors, overhead transformers, pad-mounted transformers, submersible transformers, conduit, substation (with its name) pedestals, pad-mounted J boxes, vaults, switch cabinets, and meter boxes.

26.28.030 Reports to the City.

1. The Director may require such reports and information as the Director finds necessary to ensure compliance with the terms of this title and any other applicable law or agreements.
2. Within ten days of receipt of a written request from the Director, or such other reasonable time as the Director may specify in writing, each grantee shall furnish the Director with information sufficient to demonstrate:

(a) That it has complied with all requirements of this Title.
(b) That all fees due the City in connection with the services and facilities provided by the grantee have been properly collected and paid.
(c) That the grantee has furnished the City with all necessary information with respect to its facilities in City rights-of-way.

26.28.040 Notice to Department.
For emergency activity, the grantee shall notify the Department as soon as the need for the work is known and in no event, no later than twenty-four hours after the need for work is first discovered. For nonemergency activities, the grantee shall notify the Department in accordance with the conditions of the right-of-way work permit and/or franchise. For both emergency and nonemergency activities, the grantee shall provide information about the right-of-way work as required by the Department.

26.28.050 Notice to public.
Pursuant to the Public Works Pre-Approved Plans and Policies and the terms of the right-of-way work permit, grantees may be required to provide notice to the public of work in the right-of-way prior to undertaking said work.

Chapter 26.32

FEES

26.32.010 Purpose.
The purpose of the fees established in this chapter is to ensure the recovery of the City's direct and indirect costs and expenses, including, but not limited to, actual costs of City staff time and resources as well as any outside consultation expenses which the City reasonably determines are necessary. The fees set forth are in addition to any other fees that may be required by law, including but not limited to, construction fees that may be required under Chapter 5.74 and KMC Section 19.12.090, and land use permit fees in Chapter 117 KZC.

26.32.020 Application fees.
1. Franchises are subject to application fee deposit in an amount as determined by the currently effective fee schedule. This application fee deposit shall cover the actual costs associated with the City's initial review of the application; provided, however, that the applicant shall be required to pay all other necessary application fees. This application fee deposit shall be deposited with the City as part of the application filed pursuant to this Chapter.

2. An applicant that withdraws or abandons its franchise application shall, within sixty days of its application and review fee payment, be refunded the balance of its deposit under this section, less all reasonable costs and expenses incurred by the City in connection with the application prior to the withdrawal or abandonment.

3. Prior to issuance of an applicable right-of-way work permit or WSF permit, or any other necessary permit, the applicant shall pay a permit

fee in an amount as determined by the currently effective fee schedule, or the actual costs incurred by the City in reviewing such permit application.

26.32.030 Other City costs.
To the extent allowed by law, all grantees shall, within thirty days after written demand therefor, reimburse the City for all direct and indirect costs incurred by the City in connection with any modification, amendment, renewal or transfer of a franchise.

26.32.040 Compensation.
To the extent permitted by law and subject to KZC 26.20.090, each franchise granted hereunder is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property; provided, that nothing in this title shall prohibit the City and a grantee from agreeing upon the compensation to be paid.

26.32.050 Regulatory fees and compensation not taxes.
The regulatory fees provided for in this title, and any compensation charged and paid for the rights-of-way provided for herein, are separate from and additional to any and all federal, state, local and City taxes as may be levied, imposed or due from a grantee or its customers or subscribers.

Chapter 26.36

WORK IN RIGHTS-OF-WAY

26.36.010 Placement of facilities.
1. All facilities placed by a grantee in rights-of-way within the City shall be so located as to minimize interference with the proper use of rights-of-way, and to minimize interference with the rights of property owners who adjoin any of the rights-of-way.

2. A grantee with written authorization from the City to install overhead facilities shall install its facilities on pole attachments to existing utility poles only unless a specific pole is needed due to the technology employed in the facilities, and then only if surplus space is available. Locations for placement of WSF are subject to KZC Chapter 117.

3. Whenever existing telephone, electric utilities, or telecommunications facilities are located or relocated underground within rights-of-way, a grantee with written authorization to occupy the same rights-of-way must also locate or relocate its facilities underground unless such location is not feasible due to the technology employed in the facility.

4. Whenever new electric utilities or telecommunications facilities are located underground within the City's rights-of-way, a grantee that currently occupies or will occupy the same rights-of-way shall concurrently place its facilities underground, to the extent technically feasible, at its expense.

5. A grantee shall utilize existing poles and conduit wherever possible. New poles (other than replacement poles) shall not be allowed without specific written authorization from the Director or approval pursuant to KZC Chapter 117.

26.36.020 Obstructions in rights-of-way.

1. A person who places or maintains an obstruction in, on, over, under or through the City's rights-of-way shall promptly shift, adjust, accommodate, or remove the obstruction on reasonable notice from the City at such person's expense.

2. If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the Department may shift, adjust, accommodate, or remove the obstruction, and the Director may charge the person having or maintaining the obstruction for the cost of performing the work.

3. Any opening or obstruction in the rights-of-way made by a grantee in the course of its operation shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

4. No grantee may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or other persons, or other persons authorized to use or be present in or upon the rights-of-way. All such facilities shall be moved by and at the expense of the grantee, temporarily or permanently, as determined by the City.

26.36.030 Completion of make-ready work.

To the extent consistent with state law, a grantee shall have thirty days to perform any requested "make-ready" work (work required to prepare the grantee's poles or other facilities for attachment by another party) or alterations to its facilities upon request by persons authorized to use or be present in or upon the rights-of-way. If an owner fails to perform such work within thirty days, then the authorized persons may perform such "make-ready" work or alterations at their own cost.

26.36.040 Restoration.

1. No grantee shall take any action or allow any action to be done that may permanently impair or damage any rights-of-way or other property located in, on or adjacent thereto.

2. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or any public or private property, the grantee shall, in a manner acceptable to the City, replace, repair, and restore all paving, sidewalk, utility covers, survey monuments, driveway or surface of any rights-of-way, or other public or private property, that has been disturbed by the grantee's activities in as good condition as before said work was commenced and in compliance with any then-current legal standards, including but not limited to requirements established by the Americans with Disabilities Act.

3. In particular, and without limitation, all trees, landscaping and grounds removed, damaged or disturbed as a result of right-of-way work by grantees shall, at a minimum, be replaced or restored to the condition existing prior to performance of the work. In addition, a grantee shall comply with all applicable provisions of KZC Chapter 95 and the Public Works Pre-Approved Plans regarding all trees, landscaping and grounds.

4. If weather or other conditions do not allow for the complete restoration required hereunder, the grantee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the grantee's sole expense, and the owner shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

5. All restoration work within the rights-of-way shall be done in accordance with landscape plans approved by the director.

6. Restoration pursuant to this section shall be at the grantee's cost and expense, except to the extent otherwise required by applicable law.

7. In the event that the grantee fails to complete any work required for the repair, protection, or restoration of the rights-of-way or private property, or any other work required by law or ordinance, within the time specified by and to the reasonable satisfaction of the City, the City, following notice and an opportunity to cure, may cause such work to be done. In such a case, the grantee shall reimburse the City the cost thereof within thirty days after receipt of an itemized list of such costs, or the City may recover such costs through any bond or other security instrument provided by the grantee, except to the extent otherwise required by applicable law.

26.36.050 Relocation of facilities.

1. The City may require a grantee to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety, at no cost to the City, except to the extent otherwise required by applicable law.

2. The City shall notify the grantee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the City shall consult with the grantee and consider the extent of the facilities to be relocated, the grantee's service requirements, and the construction sequence required, within the City's overall project construction sequence and constraints, to safely complete the relocation. Grantees shall complete the relocation by the date specified unless the City or a reviewing court establishes a later date for completion, after showing by the grantee that the relocation cannot be completed by the date specified, using best efforts and meeting safety and service requirements.

3. Subject to subsection (4) of this section, whenever any person, other than the City, requires the relocation of a grantee's facilities to accommodate work of such person within the franchise area, then the grantee shall have the right as a condition of any such relocation to require payment to grantee, at a time and upon terms acceptable to the grantee, for any and all costs and expenses incurred by the grantee in the relocation of the grantee's facilities.

4. Notwithstanding the provisions of subsection (3) of this section, if the City reasonably determines and notifies the grantee that the primary purpose of imposing such condition or requirement upon such person is to cause or facilitate the construction of a public works project to be undertaken within a segment of the franchise area on the City's behalf and consistent with the City's capital improvement plan, transportation improvement program or the transportation facilities program, then only those costs and expenses incurred by the grantee in reconnecting such relocated facilities with the grantee's other facilities shall be paid to grantee by such person, and the grantee shall otherwise relocate its facilities within such segment of the franchise area in accordance with subsection (1) of this section.

5. The City may require relocation of facilities at no cost to the City in the event of an unforeseen emergency that creates an immediate threat to public health, welfare and safety.

6. If a grantee is required to relocate, change or alter facilities hereunder and fails to do so, the City may cause such to occur and charge the owner for the costs incurred.

26.36.060 Underground conversions.

1. In the event that conversion of a grantee's overhead facilities to underground is required or reasonably necessary for construction, alteration, repair, or improvement of the rights-of-way for purposes of public welfare, health, or safety (such as projects that may include, without limitation, road widening, surface grade changes or sidewalk installation), a grantee, to the extent permitted by applicable law, shall bear the costs of converting the grantee's facilities from an overhead system to an underground system as follows:

(a) To ensure proper space and availability in the supplied joint trench, a grantee shall pay for the work (time and materials) necessary to complete related engineering and coordination with the other utilities involved in the project.

(b) A grantee shall pay its proportionate share of the cost of labor and materials necessary to place its cables, conduits and vaults/pedestals in the supplied joint trench and/or stand-alone cable trench. If, however, the City's costs for the grantee are not agreeable to the grantee, then the grantee shall have the right to hire its own contractor(s) to complete its work within the joint trench.

(c) If a grantee decides to use its own contractor(s) to complete its portion of the work, then the grantee and its contractor(s) are responsible for coordinating with the City to provide reasonable notice and time to complete the placement of the grantee's cables, conduits and vaults/pedestals in the trench. If the grantee fails to complete the above work within the time prescribed and to the City's reasonable satisfaction, the City may cause such work to be done and bill the reasonable cost of the work to the grantee, including all reasonable costs and expenses incurred by the City due to the grantee's delay. In such an event, the City shall not be liable for any damage to any portion of the grantee's facilities. Within forty-five days of receipt of an itemized list of those costs, the grantee shall pay the City.

(d) Within the underground conversion area, a grantee shall cooperate with the City and its contractor on any on-site coordination. The City shall be responsible for traffic control, trenching, backfill, and restoration of all work performed by its contractor. A grantee shall be responsible for traffic control, trenching, backfill, and restoration of all work performed by its contractor for stand-alone cable trenches.

2. In the event a local improvement district (LID) has been created to fund a relocation or conversion project, a grantee shall be reimbursed by the LID for all expenses incurred as a result of the project.

26.36.070 Maintenance.

A grantee of aerial facilities shall be required to trim trees upon and overhanging rights-of-way and other public places of the City so as to prevent the branches of such trees from coming in contact with the facilities of the grantee, all trimmings to be done at the expense of the grantee, except to the extent otherwise required by applicable law. A grantee shall comply with all provisions of KZC Chapter 95.20 and 95.21 (Tree Pruning).

26.36.080 Compliance with applicable laws and standards.

1. All right-of-way work shall be performed in accordance with all applicable law and regulations, including, where applicable, the Occupational Safety and Health Act of 1970, as amended; the National Electrical Safety Code, prepared by the National Bureau of Standards; and the National Electrical Code of the National Board of Fire Underwriters.

2. All right-of-way work shall comply with the requirements of the most recently adopted City Pre-Approved Plans and Policies, and in the event of a conflict between the aforesaid Pre-Approved Plans and Policies and this title, the standards of the Pre-Approved Plans and Policies shall control.

3. All of a grantee's facilities shall be installed in accordance with good engineering practice. All of a grantee's facilities shall be maintained in a safe condition, in good order and repair, and in compliance with all applicable federal, state and local requirements.

4. All safety practices required by law shall be used during construction, maintenance, and repair of a grantee's facilities.

5. A grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

6. If applicable, a grantee shall maintain membership in good standing with the Utilities Underground Location Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. A grantee shall abide by the state's "Underground Utilities" statutes (Chapter 19.122 RCW) and will further comply with and adhere to City regulations related to the One Call locator service program.

26.36.090 Traffic control plan.

1. All grantees shall comply with the Manual on Uniform Traffic Control Devices with respect to traffic control. The City may require a traffic control plan demonstrating the protective measures and devices that will be employed.

2. A grantee shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of its right-of-way work.

26.36.100 Coordination of right-of-way work.

1. A grantee shall joint trench or share bores or cuts and work with other grantees so as to reduce the number of right-of-way cuts within the City, to the extent such joint work would not impose undue economic burdens or delay upon the grantee.

2. The City shall provide as much advance notice as reasonable of plans to open the rights-of-way to those providers who are current users of the rights-of-way or who have filed notice with the clerk of the City within the past twelve months of their intent to place facilities in the City.

3. If applicable law allows the City to keep electronic copies confidential, then by the first day of February each year, each grantee shall prepare and submit to the department a plan, in a format specified by the department, that shows all reasonably foreseeable right-of-way work in the paved portion of the rights-of-way anticipated to be done in the next year, or a statement that no right-of-way work is proposed. The grantee shall report to the department promptly any changes in the plan as soon as those changes become reasonably foreseeable.

4. The department may disclose information contained in such a plan to another party only on a need-to-know basis in order to facilitate coordination and avoid unnecessary right-of-way work, or as otherwise required by law. If a grantee clearly and appropriately identifies information contained in the plan as proprietary, a trade secret, or otherwise protected from disclosure, then to the maximum extent permissible under federal, state, and local laws applicable to public

records, the department may not disclose that information to the public. If the department determines that information is not clearly or appropriately identified, the department shall notify the grantee that the department intends to disclose the requested information unless ordered otherwise by a court.

5. The department shall review the annual plans submitted by grantees and identify conflicts and opportunities for coordination of right-of-way work in the paved rights-of-way. Each applicant shall coordinate, to the extent practicable, with the City and with each potentially affected grantee to minimize disruption in the rights-of-way.

6. If communication facilities are to be placed underground in a new subdivision, the communication provider shall give written notice to other known providers in the area within which the property is located. Such notice shall be given at least forty-eight hours before commencement of trenching construction.

7. The City may facilitate joint use of the property, structures, and appurtenances of each grantee located in the rights-of-way and other public places, insofar as such joint use may be reasonable and practicable.

26.36.110 Damage to facilities.

To the extent permitted by applicable law, the City shall not be liable for any damage to or loss of any facilities within the rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the City.

26.36.120 Obligations of developers.

A developer shall provide for underground facilities for providers to serve a development in accordance with applicable law for underground facilities. The developer shall execute all required agreements relating to the underground facilities, including easements, and provide proof to the City that the agreements have been executed.

Chapter 26.40

LIABILITY, INDEMNIFICATION AND SECURITY

26.40.010 Warranty and liability.

1. For a period of two years after satisfactory completion of work in a right-of-way, the grantee warrants and guarantees the quality of the work performed and is responsible for maintaining the site free from any defects resulting from the quality of the work and, in the event of such defects, for repairing or restoring the site to a condition that complies with all applicable law and regulations. Any repair or restoration during the warranty period shall cause the warranty period to run for one additional year beyond the original two-year period with respect only to what was repaired.

2. The issuance of a right-of-way work permit or any inspection, repair, suggestion, approval, or acquiescence of any person affiliated with the City does not relieve the grantee from the warranty and liability provisions of this section, the indemnification provisions of Section 26.40.030, or any other term or condition of this title.

26.40.020 Insurance.

1. Unless otherwise provided by a franchise, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies (which may be evidenced by an acceptable certificate of insurance) insuring both the grantee and the City, and its elected and appointed officers, officials, agents, representatives and employees, as additional insureds:

(a) Commercial General Liability Insurance Written on an Occurrence Basis. The insurance policy shall be endorsed to provide a per project general aggregate and there shall be no exclusions for liability arising from explosion, collapse or underground property damage. The policy shall have limits not less than:

(i) $5,000,000 for bodily injury, property damage, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract;

(ii) $6,000,000 general aggregate, per project aggregate and products-completed operations aggregate.

(b) Automobile liability insurance covering all owned, nonowned, hired and leased vehicles with a minimum combined single limit for bodily injury and property damage of $5,000,000 per accident.

(c) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000. Grantee may satisfy this requirement by being a qualified self-insurer.

(d) Excess or Umbrella Liability insurance shall be written with limits of not less than $5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

2. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the franchise, and such other period of time during which the grantee is operating without a franchise, or is engaged in the removal of its utility services or telecommunications facilities. The insurance policies shall include the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, and consultants as additional insureds. The grantee shall provide a certificate of insurance (COI), together with the

additional insured endorsement(s) to the City, upon acceptance of the franchise. Payment of deductibles and self- insured retentions shall be the sole responsibility of the grantee or grantee. The insurance required by this section shall apply separately to each insured against whom a claim is made or suit is brought. The grantee's required insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, engineers, and consultants.

3. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the grantee's required insurance and shall not contribute with it. Receipt by the City of any certificate or evidence of insurance showing less coverage than required is not a waiver of grantee's obligations to fulfill the requirements. Grantee may utilize primary and excess liability insurance policies to satisfy the insurance policy limits required in this section. Grantee's excess liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

4. Grantee is obligated to notify the City of any cancellation or intent not to renew any insurance policy required pursuant to this section 30 days prior to any such cancellation. Within 15 days prior to said cancellation or intent not to renew, grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this section shall be considered a material breach of the franchise.

5. Grantee's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. If the grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by the grantee, irrespective of whether such limits maintained by the grantee are greater than those required by this code or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the grantee. Further, grantee's maintenance of insurance policies required by this franchise shall not be construed to excuse unfaithful performance by grantee.

6. Upon approval by the City and based on conditions set by the City in the franchise, the grantee may self-insure under the same terms as required by this section. Further, the director may modify these insurance requirements within the franchise as he/she deems necessary to comply with the City's risk management policies or as otherwise approved by the City's Risk Manager; provided, that any such changes provide adequate protection for the City.

26.40.030 Indemnification.

1. As consideration for the issuance of a franchise, the franchise shall include an indemnity clause substantially conforming to the following:

(a) Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend, and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, and representatives from any and all claims, costs, judgments, awards, or liability to any person arising from injury, sickness, or death of any person or damage to property:

i. For which the negligent acts or omissions of grantee, its agents, servants, officers or employees in performing the activities authorized are the proximate cause;

ii. By virtue of grantee's exercise of the rights granted herein;

iii. By virtue of the City's permitting grantee's use of the rights-of-way or other City property;

iv. Based upon the City's inspection or lack of inspection of work performed by grantee, its agents and servants, officers or employees in connection with work authorized on a telecommunications facility, rights-of-way or other City property over which the City has control pursuant to any franchise issued;

v. Arising as a result of the negligent acts or omissions of grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon a facility, in any rights-of-way in performance of work or services;

vi. Based upon radio frequency emissions or radiation emitted from grantee's equipment located upon a telecommunications facility, regardless of whether grantee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.

(b) Grantee's indemnification obligations pursuant to subsection A of this section shall include assuming potential liability for actions brought against the City by grantee's own employees and the employees of grantee's agents, representatives, contractors, and subcontractors even though grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought against the City by the aforementioned employees is with respect to claims against the City arising by virtue of grantee's exercise of its rights. In addition to the indemnification obligations throughout this Section, the obligations of grantee under this subsection B shall be mutually negotiated between the parties. Grantee shall acknowledge that the City would not enter into an agreement without grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, grantee will waive its immunity under Title

51 RCW relating solely to indemnity claims made by the City directly against grantee for claims made against the City by grantee's employees as provided in RCW 4.24.115.

(c) Inspection or acceptance by the City of any work performed by grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that grantee has been given prompt written notice by the City of any such claim, said indemnification obligations shall also extend to claims which are not reduced to a suit and any claims which may be compromised, with grantee's prior written consent, prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim and has the right to approve any settlement or other compromise of any such claim.

(d) In the event any such suit, claim or demand is presented to or filed with the City, the City shall notify grantee thereof, and grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit, claim or demand, or defend the same at its sole cost and expense, by attorneys of its own election. In the event that grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of grantee, then grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the City, and reasonable attorneys' fees of recovering under this Subsection.

(e) The obligations of grantee under the indemnification provisions of this section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this section, however, are not to be construed to require the grantee to hold harmless, defend, or indemnify the City as to any claim, demand, suit, or action which arises out of the sole negligence or willful misconduct of the City, its agents, officers, employees, volunteers, or assigns. In the event that a court of competent jurisdiction determines that a franchise is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to provide that the grantee's obligation to indemnify the City hereunder shall extend only to the extent of grantee's negligence.

(f) Notwithstanding any other provisions of this section, grantee assumes the risk of damage to its facilities located in the rights-of-way and upon City property from activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or willful or malicious action on the part of the City, its officers, agents, employees or contractors. Grantee releases and waives any and all such claims against the City, its officers, agents, employees and contractors. In no event shall the

City be responsible for indirect, special, consequential, or punitive damages or loses, including but not limited to lost income or business interruption, whether or not a party has been advised of the possibility of such damage and notwithstanding the theory of liability in which an action may be brought. Grantee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of grantee's facilities as the result of any interruption of service due to damage or destruction of grantee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful misconduct on the part of the City, its officers, agents, employees, or contractors.

2. These indemnification obligations shall survive expiration, revocation, termination, or completion of the activities authorized by the franchise.

26.40.040 Security fund.

1. Each grantee shall establish a permanent security fund with the City by depositing the amount of at least fifty thousand dollars or other amount as determined by the director with the City in cash or other instrument acceptable to the City (the "security fund"), which fund shall be maintained at the sole expense of the grantee so long as any of the grantee's facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond or deposit required under other code provisions or agreements.

2. The grantee shall deposit the security fund with the City on or before the effective date of its franchise, or, if the grantee does not have a franchise, on or before the date the grantee places its facilities in the rights-of-way.

3. The security fund shall serve as security for the full and complete performance of the grantee's obligations under this title and under any agreement between the grantee and the City, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City.

4. Before any sums are withdrawn from the security fund, the Director shall give written notice to the grantee:

(a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the grantee's act or default.

(b) Providing a reasonable opportunity for the grantee to remedy the existing or ongoing default or failure, if applicable.

(c) Providing a reasonable opportunity for the grantee to pay any moneys due the City before the City withdraws the amount thereof from the security fund, if applicable.

(d) Stating that the grantee will be given an opportunity to review the act, default or failure described in the notice with the City manager.

5. The grantee shall replenish the security fund within fourteen days after written notice from the City that the City has withdrawn an amount from the security fund. In the event that a grantee notifies the City that it no longer has wireless facilities on City-owned property, the balance of the fund shall be refunded to the grantee within thirty business days of said notice.

26.40.050 Construction bond.

1. Unless otherwise provided in a franchise agreement or in right-of-way work permit, each grantee shall deposit with the City, before a permit is issued, a construction bond written by a surety acceptable to the City equal to at least one hundred percent of the estimated cost of the right-of-way work covered by the permit.

2. The construction bond shall remain in force until ninety days after substantial completion of the work, as determined by the Director, including restoration of rights-of-way and other property affected by the right-of-way work. However, in addition to the foregoing, the City reserves the right to require a maintenance bond pursuant to Chapter 175 KZC.

3. The construction bond shall guarantee, to the satisfaction of the City:

(a) Timely completion of construction.

(b) Construction in compliance with applicable plans, permits, technical codes and standards.

(c) Proper location of the facilities as specified by the City.

(d) Restoration of the rights-of-way and other property affected by the right-of-way work.

(e) The submission of "as-built" maps after completion of right-of-way work as required by this title.

(f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the right-of-way work.

26.40.060 Work of contractors and subcontractors.

The contractors and subcontractors of a grantee shall be licensed and bonded in accordance with the City's generally applicable regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by

the grantee itself. The grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and it shall ensure that all such work is performed in compliance with this title and other applicable laws. The grantee shall be jointly and severally liable for all damage, and for correcting all damage, caused by its contractors or subcontractors. It is the responsibility of the grantee to ensure that contractors, subcontractors or other persons performing work on the grantee's behalf are familiar with the requirements of this title and other applicable laws governing the work they perform.

Chapter 26.44

ENFORCEMENT

26.44.010 Enforcement procedures and remedies.

1. If the City determines that a grantee has failed to perform any obligation under this title or has failed to perform in a timely manner, the City may:

(a) Issue a stop work order pursuant to Section 26.44.020; and/or

(b) Issue an order to cure pursuant to Section 26.44.030.

2. If the violation is contested (as provided in Section 26.44.020 and 26.44.030), the Director shall consider the written communication provided by the grantee and shall notify same of his or her final decision in writing within a reasonable time period.

3. If the violation has not been remedied or is not in the process of being remedied to the satisfaction of the City within a reasonable time period following the later of: (i) the expiration of the time period for contesting a violation; and (ii) the notification by the Director to the grantee of his or her final decision in respect of a contestation of the violation, the City may:

(a) Enforce the provisions of this title through injunctive proceedings, an action for specific performance, or any other appropriate proceedings.

(b) Impose a fine upon the grantee pursuant to Section 26.44.040.

(c) Assess against the grantee any monetary damages provided for such violation in any agreement between the grantee and the City.

(d) Assess and withdraw the amounts specified above from the grantee's security fund or other applicable security instrument.

(e) Revoke any franchise held by the grantee pursuant to Section 26.44.060.

(f) Pursue any legal or equitable remedy available under any applicable law or under any agreement between the grantee and the City.

4. Remedies available to the City for violations under this title and under a franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

5. A grantee shall pay civil penalties or liquidated damages within thirty days after receipt of notice from the City.

6. The filing of an appeal to any regulatory body or court shall not stay or release the obligations of a grantee under applicable law or any agreements with the City.

7. An assessment of liquidated damages or civil penalties does not constitute a waiver by the City of any other right or remedy it may have under applicable law or agreements, including the right to recover from the grantee any additional damages, losses, costs, and expenses, including actual attorneys' fees, that were incurred by the City by reason of the violation. However, the City's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the City from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation.

26.44.020 Stop work order.

1. The Director may issue a stop work order, impose conditions on any permit, or suspend or revoke a permit if the Director determines that:

(a) A person has violated applicable law or regulations or any term, condition, or limitation of a permit;

(b) Right-of-way work poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare; or

(c) There is a paramount public purpose.

2. The Director shall notify the grantee of action taken under subsection (1) of this section by a written communication, and the grantee shall comply immediately after receipt of the notice.

3. A stop work order shall state the conditions under which work may be resumed and shall be posted at the site.

4. The grantee may contest the stop work order by providing to the Director a written communication detailing the grounds for such contestation, within thirty days of receipt of the stop work order. However, unless the Director promptly orders otherwise for good cause, the submission of such written communication does not excuse the

grantee from compliance with the stop work order pending resolution of the dispute.

26.44.030 Order to cure.

1. The Director may order a grantee that has violated applicable law or regulations, or any term, condition, or limitation of a permit, to cure the violation within the time specified in the order.

2. An order issued under this section shall warn the person that a failure to comply within the time specified makes the person subject to the imposition of a penalty not to exceed one thousand dollars pursuant to the provisions of Chapter 1.04 and to liability for any costs incurred by the department to effectuate compliance.

3. The grantee may contest the cure order by providing to the Director a written communication detailing the grounds for such contestation within thirty days of receipt of the cure order. Unless the Director promptly orders otherwise for good cause, the submission of such written communication excuses the grantee from compliance with the cure order pending resolution of the dispute.

4. If the grantee fails, neglects, or refuses to comply with an order issued under this section that involves right-of-way work, the Director may complete the right-of-way work or other work in the rights-of-way in any manner the Director deems appropriate, and the grantee shall compensate the department for all costs incurred, including costs for administration, construction, consultants, equipment, inspection, notification, remediation, repair, and restoration. The cost of the work may be deducted from any construction bond or other security instrument of the grantee. The Department's completion of right-of-way work or other work in the rights-of-way does not relieve the grantee from the warranty and liability provisions of Section 26.40.010, the indemnification provisions of Section 26.40.030, or any other term or condition of this title.

26.44.040 Fines.

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

26.44.050 Removal.

1. Within thirty days following written notice from the City, any grantee with facilities in the City's rights-of-way that are not authorized pursuant to this Title shall, at its own expense, remove such facilities from the rights-of-way. If such grantee fails to remove such facilities, the City may cause the removal and charge the grantee for the costs incurred. Facilities are unauthorized and subject to removal in the following circumstances:

(a) Upon termination of the grantee's authorization under this title.

(b) If the facilities were constructed or installed without the prior grant of a franchise.

(c) Upon abandonment of a facility within the rights-of-way.

(d) If the facilities were constructed or installed at a location not permitted by the franchise.

2. The City retains the right to cut or move any facilities located within the City's rights-of-way to the extent the City may determine such action to be necessary in response to any public health or safety emergency.

26.44.060 Revocation.

1. A franchise granted by the City may be revoked for any one or more of the following reasons:

(a) Construction or operation at an unauthorized location.

(b) Material misrepresentation by or on behalf of a grantee in any application to the City.

(c) Abandonment of facilities in the rights-of-way without the express written permission of the City.

(d) Failure to relocate or remove facilities as required in this title.

(5) Failure to pay fees or costs when and as due the City.

(e) Violation of a material provision of this title.

(f) Violation of a material term of a franchise.

(g) Violation of any federal, state or local law.

2. In the event that the director believes that grounds exist for revocation of a franchise, the grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding thirty (30) days from receipt of notice to furnish evidence on any or all of the following points:

(a) That corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance;

(b) That rebuts the alleged violation or noncompliance; and

(c) That it would be in the public interest to impose civil penalties or sanctions less than revocation.

3. In the event that a grantee fails to provide evidence reasonably satisfactory to the Director as provided hereunder, the Director shall make a preliminary determination as to whether an event of default by the grantee has occurred and initially prescribe remedies in accordance with Section 26.44.060. In the event that a grantee wishes to appeal such determination, it shall do so to the hearing examiner. In the event a further appeal is sought by the grantee, it shall make such appeal to the City Council. With respect to apparent violations or noncompliance, appeals provided for herein shall be made within fourteen days of a determination adverse to the grantee. In any event, the City shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Chapter 26.48

MISCELLANEOUS PROVISIONS

26.48.010 Further rules and regulations.
The City Manager is authorized to establish further rules, regulations and procedures with respect to the City's authority to manage, regulate and control public rights-of-way for the implementation of this title. Except in cases of emergency, the City shall attempt to notify and provide an opportunity for comment to persons who may be affected by rules, regulations and procedures adopted pursuant to this section.

26.48.020 Captions.
The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

26.48.030 Severability.
If any section, subsection, sentence, clause, phrase, or other portion of this title, or its application to any person, is for any reason declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

26.48.040 Costs.
Except where otherwise expressly stated herein, all costs incurred by a grantee in connection with any provision of this title shall be borne by the grantee.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect on January 1, 2024, after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Section 5. A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

Passed by majority vote of the Kirkland City Council in open meeting this 20th day of June, 2023.

Signed in authentication thereof this 20th day of June, 2023.

Penny Sweet, Mayor

Attest:

Kathi Anderson, City Clerk

Publication Date: June 26, 2023

Approved as to Form:

Kevin Raymond, City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. O-4853

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE USE OF RIGHT OF WAY FOR TELECOMMUNICATIONS PURPOSES AND REPEALING AND REENACTING TITLE 26 OF THE KIRKLAND MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION; FILE NO. CAM23-00041.

SECTION 1. Repeals Title 26 of the Kirkland Municipal Code ("KMC").

SECTION 2. Adopts a new Title 26 of the KMC relating to the use of right of way for telecommunications purposes.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes the publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as January 1, 2024.

SECTION 5. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 20th day of June, 2023.

I certify that the foregoing is a summary of Ordinance O-4853 approved by the Kirkland City Council for summary publication.

Kathi Anderson

Kathi Anderson, City Clerk

Chapter 117 – WIRELESS SERVICE FACILITIES

Sections:

117.05 User Guide

This chapter establishes the conditions under which wireless service facilities (WSF) may locate and operate in the City. The provisions of this chapter add to and in some cases supersede the other regulations of this code.

For properties within jurisdiction of the Shoreline Management Act, see Chapter 83 KZC, as additional regulations may apply.

117.10 Policy Statement

The purpose of this chapter is to provide specific regulations for the permitting, placement, construction, modification and removal of WSF.

Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 332(c)(7), the provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of wireless services, nor shall the provisions of this chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent wireless services.

1. The goals of this chapter are to:

   a. Establish clear and nondiscriminatory local regulations concerning wireless service providers and services that are consistent with applicable Federal and State laws and regulations;

   b. Protect residential areas and land uses from potential adverse impacts that WSF might create, including but not limited to impacts on aesthetics, environmentally sensitive areas, historically significant locations, and flight corridors;

   c. Minimize potential adverse visual, aesthetic, and safety impacts of WSF;

   d. Establish objective standards for the placement of WSF;

   e. Encourage the location or attachment of multiple facilities within or on existing or replacement structures to help minimize the total number and impact of WSF throughout the community;

f. Require cooperation between competitors and, as a primary option, joint use of new and existing towers, tower sites and suitable structures to the greatest extent feasible, in order to reduce cumulative negative impacts upon the City;

g. Encourage WSF to be configured in a way that minimizes the adverse visual impact of the WSF, as viewed from different vantage points, through careful design, landscape screening, minimal impact siting options and camouflaging techniques, and through assessment of the carrier's service objective, current location options, siting, future collocations on the proposed WSF, and innovative siting techniques.

2. Accordingly, the City Council finds that the promulgation of this chapter is warranted and necessary to:

a. Manage the location of WSF in the City;

b. Protect residential areas and other land uses from potential adverse impacts of WSF;

c. Minimize visual impacts of WSF through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;

d. Accommodate the growing need for WSF;

e. Promote and encourage shared use and collocation on existing towers as a desirable option rather than construction of additional single-use towers; and

f. Avoid potential damage to adjacent properties through engineering and proper siting of WSF.

117.15 Definitions

For the purpose of this chapter, the following terms shall have the meaning ascribed to them below. Additional terms utilized in this chapter are defined by Kirkland Municipal Code (KMC) Title 26. Terms not defined in KMC Title 26 or this section shall be defined as set forth in Chapter 5 KZC:

1. "Antenna": an apparatus designed for the purpose of emitting radio frequency (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 17. Types of antennas include:
    a. Omni-directional antenna that receives and transmits radio frequency signals in a 360-degree radial pattern.
    b. Directional or panel antenna that receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.
    c. Flush-mounted antenna that is attached to the exterior of a building in such a way that there is no space between the back of the antenna and the front of the building façade.
2. "Antenna height": the highest point of the antenna measured as the elevation above sea level, or if on a rooftop or other structure, from the primary roof surface or top of the other structure to the highest point of the antenna. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater.
3. "Applicant": any person submitting an application for a WSF permit under this chapter.
4. "Approved WSF": any WSF that has received all required permits.
5. "Collocation": (a) mounting or installing an antenna facility on a preexisting structure; and/or **(**b) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
6. "Concealment": a WSF, or component or element of a WSF, that is designed to look like some feature other than a wireless tower or base station.
7. "Director" means the Planning and Building Director or designee.
8. "Decision maker": the Planning Official or Hearing Examiner, depending upon the circumstances.
9. "Decorative Pole": means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public right-of-way in which the pole is located,

and includes all of the poles identified as 'light standards' and 'light specifications' that appear in any section of the Public Works Pre-Approved Plans.

10. "Equipment enclosure": a facility, shelter, cabinet or vault used to house and protect electronic or other associated equipment necessary for processing wireless communications signals. "Associated equipment" may include, for example, air conditioning, backup power supplies and emergency generators.

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

12. "Facility" or "Facilities": the plant, equipment and property including, but not limited to, antennas, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireless telecommunications service.

13. "Macro Facility": a large WSF that provides radio frequency coverage for wireless services. Generally, macro facility antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover larger geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers. Macro facilities include but are not limited to monopoles, lattice towers, macro cells, roof-mounted and panel antennas, and other similar facilities.

14. "Nonresidential" or "nonresidential zone": (1) all portions of the City (including rights-of-way adjacent thereto, measured to the centerline of the right-of-way) in an area not zoned residential as defined in this chapter, or (2) the I-405 or SR 520 right-of-way.

15. "Permittee": a person who has applied for and received a wireless communication facility permit pursuant to this chapter.

16. "Personal wireless services**"**: commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

17. "Poles": utility poles, light poles or other types of poles, used primarily to support electrical wires, telephone wires, television cable, lighting, or guideposts; or are constructed for the sole purpose of supporting a WSF, but specifically excludes traffic signal poles.

18. "Residential zone" shall be as defined in KZC 5.10.785, together with the PLA1 and P zones; and rights-of-way adjacent to each of the aforementioned zones, measured to the centerline of the right-of-way.

19. "Service provider" shall be defined in accord with RCW 35.99.010(6). "Service provider" shall include those infrastructure companies that provide telecommunications services or equipment to enable the construction of wireless service facilities.

20. "Small wireless facility" shall be defined as provided in 47 CFR 1.6002(l).

21. "Structure": a pole, tower, base station, or other building, whether or not it has an existing antenna equipment, that is used or to be used for the provision of personal wireless service (on its own or commingled with other types of services).

22. "Telecommunications service" shall be defined in accord with RCW 35.99.010(7).

23. "Temporary WSF" means facilities that are composed of antennas and a mast mounted on a truck (also known as a cell on wheels, or "COW"), antennas mounted on sleds or rooftops, or ballast mount temporary poles. These facilities are for a limited period of time, are not deployed in a permanent manner, and do not have a permanent foundation.

24. "Tower": any structure that is designed and constructed primarily for the 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 such as microwave backhaul, and the associated site . A 'tower' does not include any structures meeting the definition of 'poles' as defined in this chapter.

25. "Traffic signal pole" is any structure designed and used primarily for support of traffic signal displays and equipment, whether for vehicular or nonmotorized users.

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

27. "Wireless services" and "wireless service facilities (WSF)": shall be defined in the same manner as in Title 47, United States Code, Chapter 5, Subchapter III, Part I, Section 332(c)(7)(C), as they may be amended now or in the future.

28. "WSF Permit" means the applicable permit for any wireless service facility including but not limited to eligible facilities modifications, small wireless facilities, and macro facilities.

117.20 Applicability

The provisions of this chapter shall apply to the placement, construction, or modification of all WSF, except as specifically exempted in KZC 117.25. Any person who desires to locate or modify a WSF in the City, which is not specifically exempted by KZC 117.25, shall comply with the applicable application permitting requirements, and design and aesthetic regulations described in this chapter. In addition, applicants for WSF inside the City's right-of-way shall also obtain a franchise pursuant to Title 26.

117.25 Exemptions

The following are exempt from the provisions of this chapter, subject to any other applicable provisions of this code:

1. Temporary WSF during a public emergency declared by the City, state or federal government.

2. Temporary WSF located on the same site as, and during the construction of, a permanent WSF for which appropriate permits have been granted. These facilities are for the reconstruction of a permanent WSF and limited to a duration of twelve months from the date of approval unless an extension is requested at least thirty days prior to the expiration date.

3. Licensed amateur (ham) radio stations.

4. Satellite dish antennas two (2) meters or less in diameter when located in nonresidential zones, and satellite dish antennas one (1) meter or less in diameter when located in residential zones, including direct to home satellite services, when used as an accessory use of the property.

5. Routine maintenance and repair of WSF (excluding eligible facilities modifications and structural work or changes in height or dimensions of support structures or buildings); provided, that the WSF is an approved WSF, and provided further that compliance with the standards of this code is maintained and a valid right-of-way use permit is held and a right-of-way work permit is obtained if the WSF is located in the right-of-way.

6. Any WSF that is owned and operated by a government entity, for public safety radio systems, ham radio and business radio systems.

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

8. WSF which legally existed or had a vested application on or prior to the effective date of the ordinance codified in this chapter; except, that this exemption does not apply to modifications of such facilities.

117.30 General Provisions

1. Permit required. Unless the WSF is exempted pursuant to KZC 117.25, no person may place, construct or modify a WSF without first having obtained a permit issued in accordance with this chapter.

2. Compliance Required. Permittees shall comply with all aspects, including conditions and restrictions, of all approvals in order to implement all actions authorized by that approval.

3. Macro facilities. Macro facilities, as defined in KZC 117.15, are allowed in all zones, consistent with regulations established herein and require a macro facility permit. Macro facilities located within the City's rights-of-way require a valid franchise.

4. Small wireless facilities. Small wireless facilities, as defined in KZC 117.15, are allowed in all zones, consistent with the regulations established herein and require a small wireless facility permit. Small wireless facilities located within the City's rights-of-way require a valid franchise.

5. Prohibited devices. Except as exempted pursuant to KZC 117.25, WSF that are not permanently affixed to a support structure and which are capable of being moved from location to location (e.g., "cell on wheels") are prohibited.

6. Prohibited locations. Towers are prohibited on properties within jurisdiction of the Shoreline Management Act as set forth in Chapter 83 KZC.

7. Permit Revocation – Suspension – Denial. A permit issued under this chapter may be revoked, suspended or denied for the following reasons including but not limited to:

a. Failure to comply with any federal, state, or local laws or regulations.

b. Failure to comply with the terms and conditions imposed by the City on the issuance of the permit.

c. When the permit was procured by fraud, false representation, or omission of material facts.

8**.** Third Party Review. In certain instances there may be a need for expert review by a third party of the RF technical data submitted by the applicant. The City may require such a technical review and the actual and reasonable costs shall be paid for by the applicant. The third-party expert shall have recognized training and qualifications in the field of RF engineering.

9. Compliance with Other City Codes. Compliance with the provisions of this chapter does not constitute compliance, or remove from the applicant the obligation to comply, with other applicable provisions of this code, the Comprehensive Plan, or any other ordinance or regulation of the City including, but not limited to, regulations governing construction or implementing the State Environmental Policy Act, the Shoreline Management Act, or KZC Chapter 95.

10. Conflict. Except with regard to Chapter 83 KZC (Shoreline Management Act), to the extent that any provision or provisions of this chapter are inconsistent or in conflict with any other provision of the Zoning Code, Comprehensive Plan or any ordinance or regulation of the City, the provisions of this chapter shall be deemed to control.

11. Pole replacements. Pole replacements requests that do not exceed the height of the existing pole may be processed concurrently with an eligible facilities modification permit pursuant to KZC 117.60, and if in the right-of-way, may also be subject to a right-of-way permit pursuant to KMC Title 26.

12. Federal Regulatory Requirements. These provisions shall be interpreted and applied in order to comply with the provisions of federal law. By way of illustration and not limitation, any WSF that has been certified as compliant with all FCC and other government regulations regarding the human exposure to RF emissions will not be denied on the basis of RF radiation concerns.

a. WSFs shall be subject to the requirements of this Code to the extent that such requirements:

i. Do not unreasonably discriminate among providers of functionally equivalent services; and

ii. Do not prohibit or have the effect of prohibiting wireless service within the City.

13. Violations. Any person who violates any of the provisions of this chapter shall be subject to the provisions of Chapter 1.12 KMC, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this chapter and all other remedies provided at law or in equity.

117.35 Application Review Process and Appeals

1. An application to site a WSF, or modify an existing WSF, shall be processed according to the table below.

Decision Maker	Facility Type
1. Planning Official Decision *(Planning Official issues decision.)*	(a) Eligible Facilities Modifications. (b) Collocation of small wireless facility on existing structure or replacement pole.

	(c) Construction of new structure for small wireless facility placement. (d) Collocation of new or replacement macro facilities on existing or replacement structure.
2. Hearing Examiner Decision *(Hearing Examiner holds public hearing and issues decision.)*	(a) Construction of new macro facilities on a new tower.

2. Challenges to the decision made on a WSF permit application issued pursuant to this chapter shall be filed in King County Superior Court or in another court of competent jurisdiction.

117.40 Macro Facility Permit Procedures.

1. Required applications. The Director is authorized to establish application forms to gather the information required by City ordinances from applicants.

    a. Franchise. If any portion of the applicant's facilities are to be located in the right-of-way, the applicant shall apply for, and receive, a franchise consistent with KMC Title 26. An applicant with a franchise for the deployment of macro facilities in the City may apply directly for a macro facility permit and related approvals.

    b. Macro Facility Permit. The applicant shall submit a macro facility permit application consistent with subsection 117.40(2). Prior to the issuance of a macro facility permit, the applicant shall pay a permit fee as set forth in the City's fee schedule or the actual costs incurred by the City in reviewing such permit application.

    c. Associated Permit(s) and Checklist(s). Any application for a macro facility permit that contains an element that is not categorically exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and KMC 24.02. Further, any application proposing a macro facility in a shoreline area (pursuant to Chapter 83 KZC), a landslide hazard area (pursuant to Chapter 85 KZC), or a critical area (pursuant to Chapter 90 KZC) shall indicate why the proposal is exempt or comply with the review processes in such codes.

    d. License Agreements. An applicant who desires to attach a macro facility, or any associated equipment, on City property, at a specific site in the right-of-way, or to any structure owned by the City shall include an application for a license agreement or site-specific agreement as a component of its application. Master license agreements, including for access to multiple City-owned poles or for public property, or City-owned structures outside the right-of-way, shall be submitted to the City Manager for approval. Site-specific agreements for the use of a specific City-owned pole or for a specific location inside the right-of-way shall be submitted to the Director for approval.

2. Macro facility application requirements.

    a. A pre-submittal meeting is encouraged prior to submitting an application for a macro facility permit.

    b. The following information shall be provided by all applicants for a macro facility permit:

        1) The name, address, phone number and authorized signature on behalf of the applicant;

        2) If the proposed site is not owned by the City, the name, address and phone number of the owner and a signed document or lease confirming that the applicant has the owner's permission to apply for permits to construct the macro facility;

        3) A statement identifying the nature and operation of the macro facility;

        4) In proposing a macro facility in a particular location, the applicant shall analyze the feasibility of locating the proposed macro facility in each of the higher priority locations established in KZC 117.45 and document, to the City's satisfaction, why locating the macro facility in each higher

priority location and/or zone is not being proposed.

5) A vicinity sketch showing the relationship of the proposed use to existing streets, structures and surrounding land uses, and the location of any nearby bodies of water, wetlands, critical areas or other significant natural or manmade features;

6) Construction drawings as well as a plan of the proposed use showing streets, structures, land uses, open spaces, parking areas, fencing, pedestrian paths and trails, buffers, and landscaping, along with text identifying the proposed use(s) of each structure or area included on the plan;

7) Photo simulations of the proposed macro facility as viewed from public rights-of-way, public properties and affected residentially zoned properties. Photo simulations shall include all cable, conduit and/or ground-mounted equipment necessary for and intended for use in the deployment regardless of whether the additional facilities are to be constructed by a third party;

8) A sworn affidavit signed by an RF engineer with knowledge of the proposed project affirming that the macro facility will be compliant with all FCC and other governmental regulations in connection with human exposure to RF emissions for every frequency at which the facility will operate. If facilities that generate RF radiation necessary to the macro facility are to be provided by a third party, then the permit shall be conditioned on an RF certification showing the cumulative impact of the RF emissions on the entire installation;

9) A notarized letter signed by the applicant stating that the WSF will comply with all applicable federal and state laws, including specifically FCC and Federal Aviation Administration (FAA) regulations, and all City codes;

10) If not proposing a collocation, then documentation showing that the applicant has made a reasonable attempt to find a collocation site acceptable to engineering standards and that: (i) collocating was technically infeasible; (ii) that it posed a physical problem; (iii) that the existing permittee has an existing agreement that reserves the requested space on the site for another provider; or (iv) that it would cost more to collocate than it would to build a new tower.

11) Information sufficient to establish compliance with KZC 117.45 through 117.55;

12) When ground disturbance is proposed, any tree disturbance shall be subject to the provisions of KZC Chapter 95;

13) The City may require a bond or other suitable performance security pursuant to Chapter 175 KZC to cover the costs of removal of the macro facility;

14) Such additional information as deemed necessary by the Director for proper review of the application, and which is sufficient to enable the decision maker to make a fully informed decision pursuant to the requirements of this chapter.

3. Macro facility permit review procedures.

a. Completeness. An application for a macro facility is not complete until the applicant has submitted all the applicable items required by KZC 117.40(2), and to the extent relevant, has submitted all the applicable items in KZC 117.40(1), and the City has confirmed that the application is complete.

b. Public Notice. Applications for macro facilities on new towers shall be noticed in accordance with KZC Section 150.30.

c. Review. Macro facility applications will be reviewed in accordance with the table in KZC 117.35. Applications will be reviewed for conformance with the application requirements in this chapter and specifically the review criteria in KZC 117.40(4) to determine whether the application is consistent with this chapter.

d. Decision. The decision maker, established by KMC 117.35, shall issue a decision on the application. The decision maker may grant a permit, grant the permit with conditions pursuant to this chapter and the code, or deny the permit.

1) Any condition reasonably required to enable the proposed use to meet the standards of this chapter

and code may be imposed.

2) If no reasonable condition(s) can be imposed that ensure the proposal meets such requirements, the application shall be denied.

3) The decision maker's decision is final.

4. Macro facility permit review criteria.

a. No application for a macro facility may be approved unless all of the following criteria, as applicable, are satisfied:

1) The proposed use will be served by adequate public or private facilities including roads and fire protection.

2) The proposed use will not be materially detrimental to the public health, safety and welfare.

3) The proposed use complies with this chapter and all other applicable provisions of this code.

b. The decision maker shall review the application for conformance with the following criteria:

1) Compliance with prioritized locations pursuant to KZC 117.45.

2) Compliance with design standards pursuant to KZC 117.50 and 117.55.

5. Macro facility permit conditions.

a. The permittee shall comply with all of the requirements within the macro facility permit.

b. The permittee shall allow collocation of proposed macro facilities on the permittee's site, unless the permittee demonstrates that: (i) collocation will impair the technical operation of the existing macro facilities to a substantial degree or (ii) is otherwise technically infeasible.

c. The permittee shall notify the City of any sale, transfer, assignment of a macro facility within sixty (60) days of such event.

d. All installations of macro facilities shall comply with any governing construction or electrical code including the National Electrical Safety Code, the National Electric Code or state electrical code, as applicable.

e. The permittee is responsible for providing or arranging for electricity to the macro facility. Any third-party utility providing such electricity shall obtain all required permits from the City prior to constructing its facilities, and it shall obtain a franchise if operating in the rights-of-way.

f. The permittee is responsible for providing transport connectivity (i.e., fiber) to macro facilities. Any third-party utility providing such transport connectivity shall obtain all required permits from the City prior to constructing its facilities, and it shall obtain a franchise if operating in the rights-of-way.

g. A macro facility permit issued under this chapter shall be substantially implemented within 12 months from the date of final approval or the permit shall expire. The permittee may request up to four (4) 12 month extensions, if the permittee cannot construct the macro facility within the original 12-month period.

h. The permittee shall maintain the macro facilities in safe and working condition. The permittee 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.

i. All macro facilities shall meet current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate macro facilities. If such standards and regulations are changed, the owners of the macro facilities shall bring such facility into compliance with such changes in accordance with the compliance deadlines and requirements of such changes. Failure to bring macro facilities into compliance shall constitute grounds for permit revocation in accordance with KZC 117.30(7).

117.45 Macro Facility Location Hierarchy.

1. Macro facilities shall be located in the following prioritized order of preference:

a. Collocated on existing macro facility.

b. Located on existing or replacement structures or buildings located in nonresidential zones.

c. Located on existing or replacement structures or buildings in residential zones on sites not used for single-family residential uses (e.g., religious facility or public facility).

d. New tower proposed in a nonresidential zone, where the sole purpose is for wireless communication facilities. Said tower shall be the minimum height necessary to serve the target area but in no event may it exceed the height requirements of the underlying zoning district by more than ten (10) feet; however, the tower shall be designed to allow extensions to accommodate the future collocation of additional antennas and support equipment. Further, the tower shall comply with the setback requirements of the relevant zone district, as applicable. In no case shall the tower be of a height that requires illumination by the FAA.

e. New tower proposed in a residential zone, where the sole purpose is for wireless communications, but only if the applicant can establish that the tower cannot be collocated on an existing structure. Further, the proposed tower shall be no higher than the minimum height necessary to serve the target area but in no event may it exceed 40 feet; however, the tower shall be designed to allow extensions to accommodate the future collocation of additional antennas and support equipment. In no case shall the antenna be of a height that requires illumination by the FAA.

117.50 Macro Facility Design Standards

1. Context. The location and design of a macro facility shall consider its visual and physical impact on the surrounding neighborhood and shall, to the extent feasible, reflect the context within which it is located.

2. Design Compatibility. Macro facilities shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape to the maximum extent practical. External projections from the structure shall be limited to the greatest extent technically feasible.

3. Concealment Technology. Macro facilities shall be screened or camouflaged employing the best available technology, such as compatible materials, location, color, artificial trees and hollow flagpoles, and other concealment technology to minimize visibility of the facility from public streets and residential properties:

a. Macro facilities shall be designed and placed or installed on a site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures by:

   1) Using existing site features to screen the macro facility from prevalent views; and

   2) Using existing or new site features as a background in a way that the macro facility blends into the background.

b. Antennas mounted to a wall of an existing building shall be flush to the wall and not project above the wall on which it is mounted.

c. To the greatest extent technically feasible, cable and/or conduit shall be routed through the inside of any new structure. Where this is not technically feasible, or where such routing would result in a structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the structure. The outside cable or conduit shall be the color of the structure, and the City may require that the cable be placed in conduit.

d. As a condition of permit approval, the City may require the applicant to supplement existing trees and mature vegetation to screen the facility. Additionally, for a proposed tower, a greenbelt easement, on a form approved by the City and recorded with King County Auditor's Office, may be required to ensure permanent retention of the surrounding trees. The greenbelt easement shall be the minimum necessary to provide screening and may be removed at the landowner's request in the event the macro facility is removed.

e. A macro facility shall be painted either in a nonreflective color or in a color scheme appropriate to the background against which the macro facility would be viewed from a majority of points within its viewshed, and in either case the color shall be approved by the City as part of permit approval.

f. Macro facilities may be subject to additional screening requirements by the Director to mitigate visual impacts to adjoining properties or public right-of-way as determined by site-specific conditions.

g. Alternative measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process that the alternative measures will be at least as effective in concealing the macro facility as the measures required above.

4. Setbacks. The following regulations apply, except for macro facilities located in right-of-way:

a. New towers in any zone shall be set back a minimum of 20 feet from any property line, plus an additional one-half (1/2) foot for each foot of tower height above 40 feet (e.g., if the tower is 40 feet in height, the setback will be 20 feet from any property line; if the tower is 50 feet in height, the setback shall be 25 feet from any property line).

b. Replacement structures intended to accommodate a macro facility shall be set back a distance equal to or greater than the setback of the original structure from any property line adjacent to or across the street from a residential use or residential zone; and the lesser of 10 feet or the distance of the original structure from any property line adjacent to or across the street from all other uses or zones.

5. Tower Height. The applicant shall demonstrate that the tower is the minimum height required to function satisfactorily.

a. Except as otherwise provided in this chapter, tower height shall not exceed 40 feet in residential zones and in other zones tower height shall not exceed the height requirements of the underlying zoning district by more than ten (10) feet.

b. Tower height in subsection a shall be measured from the average building elevation at the tower base to the highest point of the tower, antenna, or other physical feature attached to or supported by the tower.

c. The City reserves the right to approve an increase to the height of towers in any zone if a denial of the proposed tower would be in violation of the 1996 Telecommunications Act, as determined by the Director using the following test: Would denial of the application effectively prohibit the provision of telecommunications service or personal wireless service in violation of 47 USC 253 and/or 332?

6. Antenna heights. Antennas mounted to an existing, replacement, or new pole shall be subject to the following height limits:

a. In any zone, 15 feet above the top of a pole not used to convey electrical service;

b. In a residential zone, 15 feet above the electrical distribution or transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service; and

c. In a nonresidential zone, 15 feet above an electrical distribution conductor or 21 feet above an electrical transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service.

d. In any zone, antennas on a utility pole or replacement utility pole that have prior approval and exceed the height limits in subsections (6)(a) through (c) of this section may be replaced with new antennas at, but not exceeding, previously approved antenna tip height.

7. Antennas on structures other than poles. Antennas mounted to structures other than poles shall conform to the following:

a. Antennas may be attached to the sides, parapets, mechanical penthouses, or similar elements, of buildings or structures, including but not limited to water reservoirs, subject to the limitations of this chapter.

b. Antenna height is measured above the primary roof surface, not from the parapet or from the average building elevation of the building, mechanical equipment enclosure, or water reservoir. For structures that have multiple roof planes or elevations, the antenna height shall be measured from the roof elevation to which the antenna is attached.

c. An omni-directional antenna may be roof-mounted but may not be mounted on top of rooftop appurtenances. No panel or directional antennas may be mounted on roofs or project above the roofline. The “roofline” of a water reservoir that incorporates a curved roof shall be the point at which the vertical wall of the water reservoir ends and the curvature of the roof begins.

d. Antennas, including flush-mounted panel or directional antennas, may be attached to an existing conforming mechanical equipment enclosure or stair or elevator penthouse or similar rooftop appurtenance which projects above the roof of the building, but they may not project any higher than the enclosure. Antennas may also be allowed on safety railings located at the roofline of a water reservoir; provided, that the antennas do not extend above the safety railing.

e. Roof-mounted antennas shall be set back from the edge of the roof a distance equal to 100 percent of antenna height; provided that flush mount antennas on rooftop appurtenances are not subject to this requirement.

f. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered; provided that flush mount antennas on rooftop appurtenances are not subject to this requirement.

g. Except for macro facilities installed in an existing rooftop penthouse, macro facilities shall occupy no more than 10 percent of the total roof area of a building. Rooftop conduit shall be excluded from this calculation.

h. Building parapets or other architectural features, including rooftop mechanical equipment enclosures, stair or elevator penthouses, or similar rooftop appurtenances, shall not be increased in size or height solely for the purpose of facilitating the attachment of macro facilities.

8. Designated Historic Community Landmarks.

a. Applications for macro facilities on buildings, structures, or objects designated in Table CC-1 List A and B located in the Historic Resources section of the Community Character Element in the Comprehensive Plan shall be subject to the provisions of this chapter. The City shall notify the King County Historic Preservation Office in order to provide an opportunity for comments and recommendation on the application. The recommendation will be considered when making a decision on the application.

b. Applications for macro facilities on properties designated in Table CC-1 only as historic sites shall be reviewed subject to the provisions of this chapter and pursuant to the notification and consideration requirements in subsection (8)(a) of this section. Other macro facility applications on designated site-only properties are subject to the provisions of this chapter but do not require the notification and consideration requirements in subsection (8)(a) of this section.

9. Support Wires. No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by construction codes adopted by the City.

10. Lights, Signals and Signs. No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.

11. Noise. The installation and operation of macro facilities shall comply with the noise standards set forth in KZC 115.95. Equipment enclosures shall be oriented so that exhaust ports or outlets are pointed away from properties that may be impacted by noise, if necessary to meet applicable noise standards. The City may require an assessment of noise after operation begins and remediation if the noise levels created are not within the prescribed limits. Cumulative noise impacts will be measured in cases where there is more than one (1) equipment structure.

13. Equipment and Equipment Enclosures. Equipment and equipment enclosures shall conform to the following standards:

a. Maximum Size in Residential Zones. Gross floor area of equipment enclosures shall be the minimum necessary but not greater than 125 square feet each. Additionally:

1) Equipment enclosures shall not exceed six (6) feet in height above finished grade.

2) These limitations shall not apply to equipment enclosures that: (i) are fully contained within a legally established building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone, or (ii) are fully screened and satisfy the requirements of KZC Section 117.55.

b. Maximum Size in Nonresidential Zones. Gross floor area of equipment enclosures shall be the minimum necessary but not greater than 240 square feet each. Additionally:

1) Maximum height for ground-mounted equipment enclosures may not exceed 10 feet above finished grade.

2) Maximum height of rooftop mounted equipment enclosures shall be reviewed as rooftop appurtenances subject to KZC 115.120.

3) These limitations shall not apply to equipment enclosures that: (i) are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone or (ii) are fully screened and satisfy the requirements of KZC Section 117.55.

c. Equipment Enclosures Located in Right-of-Way

1) Equipment enclosures shall be placed underground if technically feasible.

2) If permitted above ground, equipment enclosures shall not exceed a height of 30 inches. If mounted on poles, said enclosures shall comply with subsection (e) of this section.

3) The Planning Official may increase the 30-inch height limitation for ground-mounted equipment structures to a maximum of 66 inches, if:

i) The height increase is required by the serving electrical utility; and

ii) No feasible alternative exists for reducing the height of the structure; and

iii) Concealment measures are employed; and

iv) The height increase will not adversely impact the neighborhood or the City.

d. Setbacks. Ground-mounted equipment enclosures over 30 inches in height shall be set back at least 10 feet from all property lines; provided, that equipment enclosures that are fully contained within a legally established building that houses or is accessory to a principal permitted use; and equipment enclosures located in the rights-of-way shall not be subject to this setback requirement.

e. Equipment Mounted on Poles or Towers. Electronic and other associated equipment may be mounted on poles or towers. When located in the right-of-way, the location and vertical clearance of such structures shall be reviewed by the Public Works Department and verified by the underlying utility owner to ensure that the structures will not pose a hazard to other users of the right-of-way.

f. Equipment Enclosure Compatibility. Equipment enclosures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.

g. Equipment Enclosure Concealment. One (1) or more of the following concealment measures shall be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment or equipment structure:

1) Locating within a building or building appendage constructed in accordance with all applicable City codes;

2) Locating on top of a building, with architecturally compatible screening;

3) Locating underground; or

4) Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.55(3).

117.55 WSF Screening

1. General. Landscaping shall be required to screen and conceal as much of the WSF and any ground-mounted features, including fencing. The City may allow or require the use of concealment technology, as described in subsections (3) and (4) of this section, either instead of or in addition to required landscaping, to achieve effective concealment. The effectiveness of visual mitigation techniques will be evaluated by the City, taking into consideration the site as built. If the WSF is mounted on a building, and the equipment enclosure is housed inside the building, landscaping shall not be required.

2. Existing Vegetation. Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance will result in less visual impact of the site on the surrounding area.

3. Buffering. Buffers around the WSF shall be required as follows:

a. Buffering of ground mounted WSF shall be required around the perimeter of the WSF as follows:

1) Provide a 5-foot-wide landscaped strip with one (1) row of trees planted no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of 2-inch caliper, minimum, and/or coniferous trees at least six (6) feet in height, minimum. At least 50 percent of the required trees shall be evergreen.

2) Living ground covers planted from either 4-inch pots with 12-inch spacing or 1-gallon pots with 18-inch spacing to cover within two (2) years 60 percent of the land use buffer not needed for viability of the trees.

b. As an option to the buffering measures described in subsection (3)(a) of this section, the City may approve or require one (1) or more of the measures provided for below, if the City determines that such measures will provide effective screening. Such optional measures include, but are not limited to, the following:

1) Walls or solid fencing, of a height at least as high as the equipment it screens, subject to subsection (4) of this section, Fencing.

2) Architectural features, such as parapets, mechanical penthouses, or building fin walls.

3) Climbing vegetation supported by a structure such as a fence or trellis, of a type and size that will provide a dense visual barrier at least as high as the equipment it screens within two (2) years from the time of planting.

4) Screening by the natural topography of the site or the adjoining property or right-of-way.

4. Fencing. Fencing may be allowed or required if it complies with KZC 115.40 and (i) is needed for security purposes, or (ii) is part of concealment technology. The use of chain link, plastic, vinyl or wire fencing is prohibited unless it is fully screened from public view. Landscaping shall be installed on the outside of fences. Fencing installed specifically for the purpose of screening ground-mounted WSF shall not be taller than necessary to provide appropriate screening.

5. Maintenance. The applicant shall maintain the screening in good condition and shall replace any plants required by this chapter or approved or required as part of the permit approval that are unhealthy or dead. In the event that screening is not maintained at the required level, the City, after giving 30 days' advance written notice to the provider, may maintain or establish the screening and bill both the landowner and provider for such costs until such costs are paid in full. The City does not waive its right to pursue code enforcement.

117.60 Eligible Facilities Modifications

1. Applicability. Eligible facilities modifications shall be reviewed pursuant to this section.

2. Definitions. The following definitions shall apply to eligible facilities modifications only as described in this section and shall not apply throughout this chapter.

a. "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:

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

2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and back-up power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small wireless facilities).

3) 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 subsections (2)(a)(1) and (2) of this section 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.

4) The term does not include any structure that, at the time the relevant application is filed with the City under this section, does not support or house equipment described in subsections (2)(a)(1) and (2) of this section.

b. "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.

c. "Eligible Facilities Modification": Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1) Collocation of new transmission equipment;

2) Removal of transmission equipment; or

3) Replacement of transmission equipment.

e. "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.

f. "Existing": A constructed tower or base station 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.

g. "Site": For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.

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

1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten (10) percent or by the height of one (1) additional antenna 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 ten (10) percent 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 the Spectrum Act.

    ii. The vertical separation of antennas is measured by the distance from the top of the existing antennas to the bottom of the new antennas.

2) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than ten (10) 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;

3) For any eligible support structure, it involves installation of more than the standard number of new

equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public streets and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure;

4) It entails any excavation or deployment outside the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

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

6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

i. "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 fixes wireless services such as microwave backhaul and the associated site.

j. "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.

3. Application. The City shall prepare and make publicly available an application form which shall be limited to the information necessary for the City to consider whether an application is an eligible facilities modification. The application shall expressly include payment of the applicable permit fee.

4. Type of Review. Upon receipt of an application for an eligible facilities modification pursuant to this chapter, the Director shall review such application to determine whether the application qualifies as an eligible facilities modification.

5. Time Frame for Review. Within sixty days of the date on which an applicant submits an application seeking approval under this chapter, the Director shall approve the application unless it determines that the application is not covered by KZC 117.60.

6. Tolling of the Time Frame for Review. The sixty-day review period begins to run when the application is filed with the City, and may be tolled only by mutual agreement by the Director and the applicant, or in cases where the Director determines that the application is incomplete. The time frame for review of an eligible facilities modification is not tolled by a moratorium on the review of applications.

a. To toll the time frame for incompleteness, the Director shall provide written notice to the applicant within thirty days of receipt of the application, clearly and specifically delineating all missing documents and/or information required in the application.

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

c. Following a supplemental submission, the Director will notify the applicant within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

7. Determination That Application Is Not an Eligible Facilities Modification. If the Director determines that the applicant's request does not qualify as an eligible facilities modification, the Director shall deny the application. In

the alternative, to the extent additional information is necessary, the Director may request such information from the applicant to evaluate the application under other provisions of this chapter and applicable law.

8. Failure to Act. In the event the Director fails to approve or deny a request for an eligible facilities modification within the time frame for review (accounting for any tolling), the request shall be deemed granted. The deemed grant of the eligible facilities modification does not become effective until the applicant notifies the Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

117.65 Small Wireless Facility Permit Procedures.

1. Required Applications. The Director is authorized to establish franchise and other application forms to gather the information required by this Chapter.

    a. Franchise. If any portion of the applicant's facilities are to be located in the City's right-of-way, the applicant shall apply for, and receive approval of, a franchise, consistent with the requirements in KMC Title 26. An application for a franchise may be submitted concurrently with an application for small wireless facility permit(s).

    b. Small Wireless Facility Permit. The applicant shall submit a small wireless facility permit application and associated components as required by KZC 117.65(2). Prior to the issuance of the small wireless facility permit, the applicant shall pay the permit fee as set forth in the fee schedule, or the actual costs incurred by the City in reviewing such permit application. If the applicant desires to locate outside the rights-of-way or has already obtained a franchise to deploy inside the rights-of-way, the applicant may apply directly for a small wireless facility permit.

    c. Associated Application(s) and Checklist(s). Any application for a small wireless permit that contains an element that is not categorically exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and KMC 24.02. Further, any application proposing small wireless facilities in a shoreline area (pursuant to Chapter 83 KZC) or a critical area (pursuant to Chapter 90 KZC) or a landslide hazard area (pursuant to Chapter 85 KZC) shall indicate why the application is exempt or comply with the review processes in such codes. Applications for small wireless facilities on new poles shall comply with the requirements in KZC 117.85.

    d. License Agreements. An applicant who desires to attach a small wireless facility or any associated equipment, on City property, at a specific site in the right-of-way, or to any structure owned by the City shall include an application for a license agreement or site-specific agreement as a component of its application. Master license agreements, including for access to multiple City-owned poles or for public property, or City-owned structures outside the right-of-way, shall be submitted to the City Manager for approval. Site-specific agreements for the use of a specific City-owned pole or for a specific location inside the right-of-way shall be submitted to the Director for approval.

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

    a. 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, to the extent provided below. 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:

        i. The location of overhead and underground public utility, telecommunication, cable, water, adjacent lighting, sewer drainage and other lines and equipment within 100 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 100 feet of the proposed project area;

ii. The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan, in compliance with Chapter 95 KZC, for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.

iii. The construction drawings shall also include the applicant's plan for backhaul and power service, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small wireless facility, to the extent to which the applicant is responsible for installing such backhaul and power service, conduits, cables, and related improvements. Where another party is responsible for installing such backhaul and power service, 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 power and backhaul service to the small wireless facility.

iv. Compliance with the siting and aesthetic requirements of KZC 117.80 and KZC 117.85, as applicable.

v. The applicant shall 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 the extent that the pole or structure is not owned by the property owner, the applicant shall demonstrate in writing that they have authority from the property owner to obtain permits 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 from the pole owner, unless the pole owner is the City. Submission of the lease agreement between the owner and the applicant is not required. For City-owned poles or structures, or property (inside or outside the rights-of-way), the applicant shall obtain a license agreement from the City prior to or concurrent with the small wireless permit application and shall submit as part of the application the information required in the license application for the City to evaluate the usage of a specific pole, structure or site.

vi. If the application is for a new or a replacement light pole, then the applicant shall provide a photometric analysis, except when the replacement light pole will be located immediately adjacent to an existing pole.

b. 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.

c. 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 RF 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.

d. 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, to the extent applicable.

e. 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 wireless facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads as established by the International Building Code. The building official may accept alternative forms of the structural approval if the review and calculations are conducted by another agency, such as the pole owner.

f. The small wireless facility application shall include those elements that are typically contained in the right-of-way work application pursuant to KMC Title 26 including a traffic control plan, to allow the applicant to proceed with the build-out of the small wireless facilities.

g. Recognizing that small wireless facility technology is rapidly evolving, the City is authorized to adopt and publish standards for the structural safety of City-owned structures.

3. Application Review Procedures. The following provisions relate to review of applications for a small wireless facility permit:

   a. General provisions.

      i. An application for a small wireless facility is not complete until the applicant has submitted all the items required by KZC 117.65(2) and, to the extent relevant, has submitted all the applicable items in KZC 117.65(1) and the City has confirmed that the application is complete. Grantees with a valid franchise for small wireless facilities may apply for a small wireless permit for the initial or additional placement of small wireless facilities at any time subject to the commencement of a new completeness review time period for permit processing.

      ii. In any zone, upon application for a small wireless permit, the City will permit small wireless deployment on existing or replacement utility poles conforming to the City's generally applicable development and design and concealment standards.

      iii. When facilities are proposed in the public right-of-way, vertical clearance shall be reviewed by the Public Works Official to ensure that the small wireless facilities will not pose a hazard to other users of the right-of-way.

      iv. 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. Eligible Facilities Requests. Small wireless facility may be expanded pursuant to an eligible facility request under KZC 117.60 so long as the expansion:

      i. does not defeat concealment elements specifically designated as stealth techniques,

      ii. incorporates the aesthetic elements required as conditions of approval set forth in the original small wireless facility approval in a manner consistent with the rights granted an eligible facility, and

      iii. does not exceed the conditions of a small wireless facility as defined by 47 CFR 1.6002(l).

   b. 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.

   c. Withdrawal. Any applicant may withdraw an application submitted 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 decision-maker'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 decision-maker's decision, there shall be no refund of all or any portion of such fee.

   d. Supplemental Information. If the requested supplemental information is not submitted by the applicant within ninety (90) days of notice by the Director, the application file shall be closed, unless an extension period has been approved by the Director.

   e. Final Decision. All small wireless facility permit applications shall be reviewed by the decision maker, pursuant to KZC 117.35. The decision maker shall review and make a determination on all applications to site small wireless facilities, consistent with this chapter as well as other applicable code provisions. The decision maker's decision shall be final. Denial of one or more wireless facility locations within a submission described in this section shall not be the sole basis for denial of other locations or applicant's entire application for wireless facilities.

4. Permit Conditions.

   a. The permittee shall comply with all of the requirements and conditions of the small wireless permit.

b. Governing construction or electrical code. All installations of small wireless facilities shall comply with all applicable governing construction and/or electrical codes including the National Electrical Safety Code, the National Electric Code or state electrical code, as applicable.

c. Electrical connection. The permittee is responsible for providing or arranging for electricity to small wireless facilities. Any third-party utility providing such electricity shall obtain all required permits from the City prior to constructing their facilities and obtain a franchise if operating in the rights-of-way.

d. Transport/telecommunications connection. The permittee is responsible for providing transport connectivity (i.e., fiber) to small wireless facilities. Any third-party utility providing such transport connectivity shall obtain all required permits from the City prior to constructing their facilities and obtain a franchise if operating in the rights-of-way.

e. Post-Construction as-builts. Upon request, the permittee shall provide the City with as-builts of the small wireless facilities within thirty (30) days after construction of the small wireless facility, demonstrating compliance with the permit and site photographs.

f. Permit time limit. Construction of the small wireless facility shall be completed within twelve (12) months after the approval date by the City. The permittee may request up to four (4) 12 month extensions.

g. Site safety and maintenance. The permittee shall maintain the small wireless facilities in safe and working condition. The permittee shall be responsible for the immediate 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.

h. Operational activity. The grantee shall commence operation of the small wireless facility no later than twelve (12) months after installation and may request two (2) extension for an additional six (6) month periods if grantee can show that such operational activity is delayed due to inability to connect to electrical or backhaul facilities.

i. Modifications. 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.

j. Exceptions to modifications. A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility within the rights-of-way, or the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements, designated as stealth techniques, 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. If the small wireless facility is located in the right-of-way, a Right-of-Way Permit may be required for such routine maintenance, repair or replacement consistent with KMC Title 26.

117.70 Small Wireless Facility Permit – Consolidated.

1. 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 multiple departments. The issuance of a small wireless facility permit shall be governed by the time limits established by federal law for small wireless facilities.

2. The general standards applicable to the use of the rights-of-way described in KMC Title 26 shall apply to all small wireless facility permits for location in the right-of-way.

117.75 Small Wireless Facilities Design and Concealment Standards.

1. General Provisions.

a. In the event power is later undergrounded in an area where small wireless communication facilities are located above ground on utility poles supporting such power lines, the small wireless communication facilities

shall be removed and may be replaced with a facility meeting the design standards for new poles in KZC 117.80 or collocated on existing poles.

b. Except for electrical meters, ground mounted equipment in the right-of-way is prohibited, unless the applicant can demonstrate that pole mounted, completely concealed within the pole, 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 right-of-way are prohibited.

c. Small wireless facilities are not permitted on traffic signal poles.

d. Replacement poles and new poles shall comply with the 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 right-of-way. Further, the location of any replacement or new pole shall: 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.

e. Replacement poles shall be located in accordance with the City of Kirkland Department of Public Works Pre-Approved Plans, Policy G-6: Utility Policy.

f. No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna or equipment enclosure or on the pole. Any permitted signage shall be located either on the equipment enclosures or in the location required by law and be of the minimum size necessary to achieve the intended or required purpose (no larger than 4x6 inches unless required by law).

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

h. Side arm mounts for antennas or equipment shall be the minimum extension necessary and the inside edge of the antenna may be no more than twelve (12) inches from the surface of the pole.

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

j. No equipment shall be operated so as to produce noise in violation of KZC 115.95 and Chapter 173-WAC, Maximum Environmental Noise Level.

j. Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached and be mounted as close to the structure or pole as feasible.

k. Except for locations in the right-of-way, small wireless facilities are prohibited on any property containing a residential use in the low-density residential zones; provided that where small wireless facilities are intended to be located more than 400 feet from a right-of-way and within an access easement over residential property, the location may be allowed if:

1) the applicant affirms that it has received an access easement from the property owner to locate the facility in the desired location; and

2) the property owner where the facility will be installed has authority to grant such permission to locate the facility and related equipment at the designated location pursuant to the terms of the access easement; and

3) the installation is allowed by, and consistent with, the access easement; and

4) such installation will not frustrate the purpose of the easement or create any access or safety issue, and

5) such installation shall be in compliance with all applicable land use regulations such as, but not limited to, setback requirements.

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

m. 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 streetscape.

2. Small wireless facilities attached to existing, or replacement non-wooden poles located inside or outside the right-of-way shall conform to the following design criteria:

a. Upon adoption of a city standard for small wireless facility pole design(s) within the City's Engineering, Design, and Construction Manual, an applicant shall 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 further described in KZC 117.80.

b. The applicant shall minimize to the extent feasible the antenna and equipment space and shall use the smallest enclosures technically necessary to fit the equipment and antennas. The antennas and equipment shall be located using the following methods:

1) Concealed completely within the pole or pole base. Antennas and the associated equipment enclosures (excluding 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. In addition, if the equipment enclosure is concealed completely within the pole or pole base, the equipment enclosure may not exceed twenty-eight (28) cubic feet.

2) 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. In addition, the associated equipment enclosures may not exceed twenty-eight (28) cubic feet.

3) Located on a pole. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall conform to the following:

i. The antenna(s) shall be placed as close to the surface of the pole as feasible, meaning that the interior edge may not be more than twelve (12) inches off the surface of the pole, and only if such distance is necessary for antenna tilt and/or technical need. Each antenna may not exceed three (3) cubic feet in volume.

ii. The equipment shall be placed as close to the surface of the pole as feasible, but it may not be more than six (6) inches off the surface of the pole. The equipment shall be placed in the smallest enclosure feasible for the technical need of the small wireless facility. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna (including conduit) 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, or the operation of the small wireless facility.

iv. To the extent feasible, the equipment enclosures 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, or the operation of the small wireless facility.

v. The applicant may place 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.

4) On private property. If located on private property, the applicant shall provide documentation establishing the lease or easement right and permission of the property owner to locate the small wireless facility on the private property. In addition, the associated equipment enclosures may not exceed twenty-eight (28) cubic feet.

c. A unified enclosure housing shall be placed as close to the surface of the pole as feasible, but the interior edge of the unified antenna and equipment enclosure shall not extend more than twelve (12) inches off the pole if necessary for antenna tilt and/or technical need. The unified enclosure shall be the smallest size technically necessary, but it shall not exceed the dimensional requirements of KCZ 117.75(2)(b)(3)(ii) above.

d. 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 shall meet WSDOT height clearance requirements. Applicants are encouraged to place the equipment enclosure as close to the antennas as physically and technically feasible, unless such placement would cause a greater aesthetic impact.

e. All conduit, cables, wires and fiber shall 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.

f. 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 necessary. The antennas and any extension 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. 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.

g. 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.

h. The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary, whichever is less; provided that the height of the replacement pole cannot be extended further by additional antenna height.

i. 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 25% increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the pole and shall comply with the requirements in KZC 117.75(1)(d).

j. 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 may not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment may be required to be removed.

3. Wooden pole design standards. Small wireless facilities attached to wooden utility poles located inside or outside the right-of-way, and in public easements, shall conform to the following design criteria:

a. 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 feasible to provide sufficient separation and/or clearance from electrical and wireline facilities.

b. A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than 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 feasible 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 match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

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

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

e. The interior edge of an antenna shall not be mounted more than twelve (12) inches from the surface of the wooden pole.

f. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna shall not be more than three (3) cubic feet in volume.

g. A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection 3(a) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches in diameter, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna shall 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.

h. The furthest point of any antenna or equipment enclosure may not extend more than twenty-eight (28) inches from the face of the pole. Any equipment or antenna enclosures shall meet WSDOT height clearance requirements. Applicants are encouraged to place the equipment enclosure as close to the antennas as physically and technically feasible, unless such placement would cause a greater aesthetic impact.

i. 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.

j. 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.

k. Equipment for small wireless facilities shall be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to KZC 117.75(1)(b). The equipment shall be placed in the smallest enclosure feasible 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, or the small wireless facility.

l. A unified enclosure may be utilized and shall be placed as close to the surface of the pole as feasible, but the interior edge of the unified enclosure shall not extend more than twelve (12) inches off the pole if necessary for antenna tilt and/or technical need. The unified enclosure shall be the smallest size technically necessary, but shall not exceed the dimensional requirements of KZC 117.75(3)(k) above. To the extent feasible, 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 small wireless facility or operations of the banners or signs.

m. 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 feasible

n. The small wireless facility shall be considered a secondary use to the primary use of the utility pole. If the primary use of a utility pole serving as the host site for a small wireless facility becomes unnecessary, the utility

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.

o. The diameter of a replacement pole shall comply with the requirements listed in KZC 117.75(1)(d) above or the pole owner's standard pole size.

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

4. Small Wireless Facilities Attached to Buildings. Small wireless facilities attached to existing buildings shall conform to the following requirements:

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

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

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

d. Small wireless facilities shall utilize the smallest mounting brackets necessary, in order to provide the smallest offset from the building.

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

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

g. The applicant shall provide approval from the building owner, including consent that the small wireless design meets the building owner's design requirements.

h. Small wireless facilities shall comply with the height requirement of the underlying zoning district.

i. Feed lines and coaxial cables shall be located below the parapet of the rooftop or otherwise concealed from view.

h. If an equipment enclosure cannot be located within the building where the small wireless facilities will be located, then the City's first preference is for the wireless provider 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 shall be consistent with the existing building in terms of color, design, architectural style, and material. If the equipment enclosure cannot be located on the roof or within the building, then it shall be located underground consistent with KZC 117.75(1)(b).

5. Small wireless facilities attached to cables. Small wireless facilities mounted on cables strung between existing utility poles inside the right-of-way shall only be permitted if the applicant can establish that the proposed facility cannot be located on an existing pole, tower or other existing structure; further, if allowed, cable mounted facilities shall comply with all standards set forth below:

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

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

3) The pole shall be able to support the necessary load requirements of the strand mounted facility;

4) The strand mounted devices shall be placed as close as feasible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater distance is technically necessary or is required by the pole owner for safety clearance;

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

6) Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets or required by a third-party service provider, such as the electric utility;

7) Pole mounted equipment shall comply with the requirements of KZC 117.75(5)(a) and (b) above;

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

9) Strand mounted facilities are prohibited on non-wooden poles, unless the existing pole has pre-existing communication wirelines.

117.80 Small Wireless Facilities Design and Concealment Standards for New Poles in the Rights-of-Way or on Decorative Poles.

1. New poles within the right-of-way or for installations on a Decorative Pole are only permitted if the applicant can establish that:

a. 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 right-of-way such as public property, building, transmission tower or separate structure;

b. The proposed small wireless facility complies with the applicable requirements of KZC 117.75(1);

c. The proposed small wireless facility receives approval for a concealment element design, as described in KZC 117.80(3) below;

d. The proposed small wireless facility complies with SEPA, if applicable; and

e. No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance (Chapter 90 KZC) or the City's Shoreline Management Act (Chapter 83 KZC), except when determined to be exempt pursuant to said ordinance.

2. An application for a new pole or installation on a Decorative Pole is subject to review and approval or denial by the planning official.

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

a. If the applicant desires to place the small wireless facility on a Decorative Pole, and the City has created a small wireless facility standard for such type of Decorative Pole in the Standard Specification and Details, then the applicant is encouraged to first consider using the Decorative Pole design adopted for small wireless facilities from the Standard Specification and Details. The applicant, upon a showing that using the Standard Decorative Pole design is either technically or physically infeasible, or that a modified pole design will not comply with the City's ADA, or sidewalk clearance requirements and/or would violate electrical or other safety standards, may deviate from the adopted standard Decorative Pole design and propose a concealment element design consistent with subsection b below.

b. 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 technically feasible, or that such deployment would undermine the generally applicable design standards, in such case, the applicant shall propose a concealment element design consistent with subsection c below.

c. 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 right-of-way, including similar height to the extent technically feasible. If the proposed small wireless facility is placed on a replacement pole, then the replacement pole shall be of the same general design as the pole it is replacing. 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, to the extent technically feasible.

4. Even if an alternative location is established pursuant to subsection KZC 117.80(1)(a), 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.

5. Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way (other than an electric meter or other third-party service equipment), the applicant shall obtain a site-specific agreement from the City to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles when the replacement is necessary for the installation or attachment of small cell facilities, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the small cell facility is more than sixty (60) feet.

117.85 Nonuse/Abandonment

1. A WSF shall be removed by the facility owner or operator within 60 days of the date it ceases to be operational. In the event the use of any WSF will be discontinued for a period of 60 consecutive days, the owner or operator shall so notify the City in writing, and the WSF shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City, which shall have the right to request documentation and affidavits from the WSF owner or operator regarding the WSF operations. Upon such abandonment, the owner or operator of the WSF or the owner of the property upon which such facility is located shall have an additional 60 days within which to:

a. Reactivate the use of the WSF or transfer the WSF to another owner or operator who makes actual use of the WSF; or

b. Remove the WSF. If such WSF is not removed within said 60 days from the date of abandonment, the City may remove such WSF at the facility owner’s expense. If there are two (2) or more wireless service providers on a single tower or pole, then the WSF support structure need not be removed until all users cease using the structure.

2. At the earlier of 60 days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval of the WSF shall automatically expire.

117.90 Lapse of Approval

For all WSF permit decisions issued for applications that were complete on or before the effective date of this ordinance, the applicant must substantially complete construction for the development or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within five (5) years after the final approval on the matter or the decision becomes void.

For development activity or other actions with phased construction, lapse of approval may be extended when approved under this chapter and made a condition of the notice of decision.