

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON,
AMENDING TITLE 17.28 OF THE MILL CREEK MUNICIPAL CODE BY
REPEALING MCMC SECTION 17.28.080 AND REPLACING IT WITH NEW
MCMC SECTION 17.29 AUTHORIZING AND ESTABLISHING STANDARDS
FOR THE DEPLOYMENT OF ALL WIRELESS COMMUNICATION FACILITIES;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, the City Council deems it to be in the public interest to revise its municipal code requirements to deal with small wireless facilities as well as macro facilities;

WHEREAS, the permitting procedures as well as the aesthetic design and concealment standards that govern deployment of wireless facilities will become MCMC Chapter 17.29;

WHEREAS, separately, federal law and regulation also sets time limits on the processing of applications for eligible facility requests to expand existing structures which do not substantially change the height or profile of the structures used to collocate wireless communications facilities and which regulations will also become part of MCMC Chapter 17.29; and

WHEREAS, the FCC Order allows the City to adopt aesthetic standards for deployment of small wireless facilities that will require utilization of a consolidated process emphasizing administrative review in order to comply with federal presumptively reasonable time limits for review; and

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

NOW THEREFORE BE IT ordained by the City Council of the City of Mill Creek, Washington as follows:

Section 1. Amendment to MCMC 14.09.010. The Mill Creek Municipal Code Section 14.09.010 – Administrative Decisions without Notice is hereby amended as follows:

A. Scope. The director shall review and decide the following matters pursuant to applicable criteria without the need for public notice:

1. Lot line adjustments.
2. Extensions of time for administrative actions or applicant submissions.
3. Minor amendments or modifications to approved developments or permits. For purposes of this subsection, minor amendments are those that may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not: (a) negatively affect the overall project character, (b) increase the number of dwelling units, or intensity of use, or (c) decrease the quality or amount of required landscaping or open space.
4. Group A home occupations.
5. Yard requirements set forth in MCMC 17.22.030.
6. Joint parking facilities and related agreements under MCMC 17.27.020(H).
7. Administrative interpretations permitted or required in the administration or enforcement of the development code.
8. Administrative decisions permitted or required under the development code.
9. Wireless communications facility applications as set forth in MCMC 17.29.

B. Decisions. The director may issue, approve, approve with conditions, or deny any of the foregoing matters based on his evaluation and assessment in light of the applicable review criteria or development code provisions. Upon completing the review specified above, the director shall issue a decision in accordance with the applicable provisions of MCMC 14.09.080. Decisions under this section shall be final for all purposes, including appeal, on the date issued.

C. Appeal. Except as described in MCMC 17.29.280, Appeals of final decisions under this section shall be made to the hearing examiner in accordance with Chapter 14.11 MCMC.

Section 2. Amendment to MCMC 3.42.180. The Mill Creek Municipal Code Section 3.42.180 – Fees under MCMC 17.42.010 (Zoning and land use) is hereby amended as follows:

A. The following application or permit fees shall be payable in full, in advance, for the identified action. All such fees are nonrefundable unless otherwise stated. These fees cover the review by the departments of community development and public works.

1. Comprehensive plan amendment (text or map) and associated rezone:
 - (a) Zero to 10 acres: \$2,500.
 - (b) Over 10 acres: \$5,000.
2. Zone text amendment: \$2,500.

3. Subdivision:
 - (a) Preliminary plat (long, five more lots): \$2,500 plus \$35.00 per lot.
 - (b) Final plat (long): \$1,500 plus \$20.00 per lot.
 - (c) Plat (short, one to four lots): \$1,500.
 - (d) Final plat (short): \$500.00.
4. Binding site plan:
 - (a) Application: \$5,000.
 - (b) Final binding site plan: \$1,000.
5. Modifications to approved land use permits/decisions:
 - (a) Major modification: \$2,500.
 - (b) Minor modification: \$250.00.
6. Administrative reviews:
 - (a) Zoning certification letter: \$150.00.
 - (b) Administrative interpretations/decisions: \$200.00.
7. Conditional use permit:
 - (a) All other conditional uses: \$1,500.
8. Variance: \$500.00.
9. Grading permit: see MCMC [3.42.210](#) for fee formula.
10. Tree removal permit: \$0.00.
11. Demolition permit: \$50.00.
12. Lot line adjustment or lot line consolidation: \$500.00.
13. Home occupation permit:
 - (a) Group A permit: \$50.00.
 - (b) Group B permit: \$100.00.
14. Appeal of land use or administrative interpretations as follows:

- (a) Administrative determinations: \$100.00.
 - (b) Administrative decisions: \$250.00.
 - (c) SEPA determination of significance: \$250.00.
 - (d) Design review board decisions: \$500.00.
 - (e) SEPA determination of nonsignificance/mitigated determination of nonsignificance: \$500.00.
 - (f) Hearing examiner decision, which is appealable to the city council: \$500.00.
 - (g) Initial appeal of notice of violation or civil fine: \$0.00.
 - (h) Administrative decision regarding a macro wireless communication facility application: \$500.
 - (i) Administrative decision regarding small wireless facility permit application: \$500.
15. Real estate/directional sign permit:
- (a) Homeowner: \$25.00.
 - (b) All other: \$100.00.
16. Temporary construction sign permit: \$25.00.
17. Commercial, shopping center and noncommercial banner or temporary sign display: \$25.00.
18. Commercial wall sign: fee is based on construction cost and assessed pursuant to the fee schedule set forth in MCMC 15.04.020.
19. Fence permit: \$55.00 (includes base building permit fee).
20. Wireless Communications Facilities: The total fee for which the applicant is responsible shall be the amount of the actual costs incurred by the City during the preparation and review process. The below fees are initial deposits. Upon issuance of the permit the applicant shall pay the City any remaining balance of the permit costs based on the review time of the City.
- (a) Wireless Communication Facility Macro Cell Permit: \$1,500

- (b) Small Wireless Facility Permit (includes up to five small cell facilities on existing poles): \$500.
- (c) Small Wireless Facility Permit, beyond initial five on existing poles (per pole): \$100.
- (d) Small Wireless Facility Permit, new or replacement pole: \$1,000 per pole.
- (e) Eligible Facilities Request: \$500.

Section 3. Amendment to MCMC 17.28.030. The Mill Creek Municipal Code Section 17.28.030 – Procedure for conditional uses other than adult businesses and wireless facilities is hereby amended as follows:

17.28.030 – Procedure for conditional uses other than adult businesses and wireless facilities

The following standards shall apply to applications for conditional uses that do not involve adult businesses ~~and wireless facilities~~:

- A. **Application.** Upon receipt of a complete application for a conditional use permit, the application shall be processed pursuant to MCMC Title [14](#).
- B. **Review.** The director shall review the application for conformance with MCMC [17.28.060](#); provided, that the director may waive one or more of those standards if the proposed use is determined to be a public necessity.
- C. **Decision.** A permit may be granted, granted with any conditions deemed necessary by the director to meet the terms of this chapter and this code, or denied. If no reasonable condition(s) can be imposed to ensure that the proposed use meets the terms of this chapter and this code, then the application shall be denied. Each decision granting or denying a conditional use permit shall be supported by written findings of fact specifically addressing the applicable criteria.
- D. **Conditions.** Conditions imposed under this chapter shall constitute permanent regulations on the exercise of the approved use.
- E. **Timing of Actions.** A final decision regarding a conditional use application shall be made as provided in MCMC Title [14](#). Appeals of such decisions shall be as provided in MCMC Title [14](#).

Section 4. MCMC 17.28.080 and MCMC 17.28.050 are hereby repealed in their entirety and replaced with MCMC Chapter 17.29, which is enacted as follows:

Chapter 17.29
Wireless Communications Facilities

Sections:

Article I. GENERAL

- 17.29.010 Purpose.
- 17.29.020 Applicability.
- 17.29.030 Definitions.
- 17.29.040 General Provisions.

Article II. MACRO FACILITIES

- 17.29.050 Application requirements for macro facilities.
- 17.29.060 Procedure for macro facilities permit.
- 17.29.070 Review criteria for macro facilities.
- 17.29.080 Prioritized locations for macro facilities.
- 17.29.090 Design and concealment standards for macro facilities.
- 17.29.100 Expiration of macro facility permit.
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Article III. ELIGIBLE FACILITIES REQUEST

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- 17.29.130 Application.
- 17.29.140 Qualification as an Eligible Facilities Request.
- 17.29.150 Timeframe for review.
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Article IV. SMALL WIRELESS FACILITIES

- 17.29.190 Application requirements for small wireless facilities.
- 17.29.200 Review criteria.
- 17.29.210 Permit requirements.
- 17.29.220 Modifications to small wireless facilities.
- 17.29.230 Consolidated permit.
- 17.29.240 Hierarchy for small wireless facilities.
- 17.29.250 Decorative Poles for small wireless facilities.
- 17.29.260 Design and concealment standards for small wireless facilities.
- 17.29.270 New poles in the right-of-way for small wireless facilities and installations on Decorative Poles.
- 17.29.280 Appeals.

Article I. GENERAL

17.29.010 Purpose.

The purpose of this chapter is to regulate the placement, construction and modification of wireless communication facilities, in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunication marketplace in the City. Among the purposes included are to:

- A. Minimize potential adverse visual, aesthetic, and safety impacts of all wireless communication facilities.
- B. Establish objective standards for the placement of wireless communication facilities.
- C. Ensure that such standards allow competition and do not unreasonably discriminate among providers of functionally equivalent services.
- D. Encourage the design of such wireless communication facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.
- E. Encourage the collocation or attachment of wireless communication facilities on existing support structures to help minimize the total number and impact of such structures throughout the community.

17.29.020 Applicability.

- A. **Applicability.** The placement of any wireless communication facility in any location within the city is subject to the provisions of this chapter.
- B. **Permit Required.** Any person holding a license from the FCC to provide wireless communications services who desires to place any wireless communication facility within the boundaries of the city must apply to the city for the appropriate wireless communication facility permit.
- C. **Lease Required.** In addition to the requirement of obtaining the appropriate wireless communication facility permit, if all or a portion of the wireless communication facility will be located upon a city-owned structure, or upon non-right-of-way property which is either city-owned or city-leased, the applicant shall be required to enter into a lease agreement with the city for the use of the city property.
- D. **Franchise Required.** In addition to the requirement of obtaining the appropriate wireless communication facility permit, if all or a portion of the wireless communication facility will be located within the city's right-of-way, the applicant shall be required to enter into a franchise agreement, consistent with MCMC Chapter 12.14, with the city for the use of the city's right-of-way.

17.29.030 Definitions.

For the purpose of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended. Words not otherwise defined shall have their common and ordinary meaning:

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

B. “Collocation” means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Provided that, for purposes of Eligible Facilities Requests, “collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

C. “Director” means the Public Works and Development Services Director or his/her designee.

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

E. “Light Pole” means a pole used primarily for lighting streets, parking areas, parks or pedestrian paths.

F. “Macro facility” means a large wireless communication facility that provides radio frequency coverage for a cellular telephone network. Generally, macro cell 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 cell facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers.

G. “Overhead facilities” means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

H. “Service provider” is defined consistently with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.

I. “Small wireless facility” has the same meaning as defined in 47 CFR 1.6002.

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

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

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

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

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

O. “Unified enclosure” means a small wireless facility providing concealment of antennas and equipment within a single enclosure.

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

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

17.29.040 General Provisions.

A. Wireless communication facilities shall not be considered nor regulated as essential public facilities.

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

C. A small wireless facility, as defined in MCMC 17.29.030, located within the public right-of-way pursuant to a valid franchise are outright permitted uses in every zone of the City but still require a small wireless facility permit pursuant to MCMC Article IV.17.29.190.

D. Macro facilities, as defined in MCMC 17.29.030 are permitted uses in every zone of the City, but still require a macro facility permit pursuant to MCMC 17.29.050.

Article II. MACRO FACILITIES

17.29.050 Application requirements for macro facilities.

A. Applications for a macro facility shall be filed with the Director on forms prescribed by the City. All applications shall be accompanied by a filing fee and other applicable fees as required by Chapter [3.42](#) MCMC. Each application shall contain the following:

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 confirming the owner's permission to construct the macro facility;
3. A statement identifying the nature and operation of the macro facility;
4. 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;
5. A plan of the proposed use showing proposed 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;
6. Information necessary to demonstrate the applicant's compliance with FCC rules, regulations and requirements which are applicable to the proposed macro facility;
7. Documentation showing that the proposed facility will not cause interference with other wireless communication facilities and telecommunication devices;
8. A statement demonstrating that the applicant has made a reasonable attempt to find a co-location site acceptable to engineering standards and that no co-location site was practically or economically feasible; and
9. Such additional information as deemed necessary by the Director for proper review of the application, and which is sufficient to enable the Director to make a fully informed decision pursuant to the requirements of this chapter.

17.29.060 Procedure for macro facilities permit.

- A. Application. Upon receipt of a complete application for a macro facility, the application shall be processed administratively pursuant to MCMC Title 14.09.010.
- B. Review. The Director shall review the application for conformance with the application requirements and review criteria to determine whether the application is consistent with this chapter.
- C. Decision. A permit may be granted, granted with conditions pursuant to this chapter and the code, or denied. Any condition reasonably required to enable the proposed use to meet the standards of this chapter and code may be imposed. If no reasonable condition(s) can be imposed that ensure the application meets such requirements, the application shall be denied.
- D. Conditions. Conditions imposed under this chapter shall constitute permanent regulations on the exercise of the approved use. Each permit issued by the City shall be conditioned to:
 - 1. Require the permittee to allow collocation of proposed macro facilities on the permittees' site, unless the permittee demonstrates that collocation will substantially impair the technical operation of the existing macro facilities to a substantial degree.
 - 2. Require the permittee to maintain the macro facility in a state of good repair and to maintain or replace, if necessary, vegetation and landscaping required as a condition of approving the permit.
 - 3. Require the permittee to notify the City of any sale, transfer, assignment of a site or a macro facility within 60 days of such event.
 - 4. Require the permittee to comply with the provisions of this title and all other applicable city ordinances and rules and regulations.

17.29.070 Review criteria for macro facilities.

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

- A. The proposed use is harmonious and appropriate in design, character and appearance with the existing or intended character or quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property.
- B. The proposed use will be served by adequate public facilities including roads, water, and fire protection.
- C. The proposed use will not be materially detrimental to uses or property in the immediate vicinity of the subject property, and will not materially disturb persons in the use and enjoyment of their property.

- D. The proposed use will not be materially detrimental to the public health, safety and welfare.
- E. The proposed use is in accord with the comprehensive plan.
- F. The proposed use complies with this chapter and all other provisions of this code.
- G. The Director shall review the application for conformance with the following criteria:
 - 1. Compliance with prioritized locations pursuant to MCMC 17.29.080.
 - 2. Compliance with design standards pursuant to MCMC 17.29.090.

17.29.080 Prioritized locations for macro facilities.

Wireless communication facilities shall be located in the following prioritized order of preference:

- A. Collocation with existing macro facility(ies) or another existing public facility/utility facility (i.e., existing or replacement PUD pole or an existing monopole/tower).
- B. Collocation on existing buildings and structures located in nonresidential zones.
- C. Collocation on existing buildings and structures in residential zones not used for residential use (e.g., religious facility or public facility).
- D. New monopole structure where the sole purpose is for wireless communication facilities; i.e., monopole or other type of tower, located in a commercial or business zone district. Said monopole structure shall be the minimum height necessary to serve the target area; however, the structure shall be designed to allow extensions to accommodate the future collocation of additional antennas and support equipment. Further, the monopole structure shall comply with the setback requirements of the commercial or business zone districts, as applicable. In no case shall the antenna be of a height that requires illumination by the Federal Aviation Administration (FAA).
- E. New monopole structure where the sole purpose is for wireless communication facilities; i.e., monopole in residential zone districts, but only if the proposed WCF structure meets all of the following criteria:
 - 1. The structure shall be set back from residential structures and public right-of-way a minimum of 150 feet.
 - 2. The structure must be no higher than the minimum height necessary to serve the target area; however, the structure 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.

17.29.090 Design and concealment standards for macro facilities.

All macro facilities shall be constructed or installed according to the following standards:

A. Macro facilities must comply with applicable Federal Communications Commission (FCC), Federal Aviation Administration (FAA), state, and city regulations and standards.

B. Antennas shall be located, mounted and designed so that visual and aesthetic impacts upon surrounding land uses and structures are minimized, and so that they blend into the existing environment. Panel and parabolic antennas shall be screened from residential views and city right-of-way.

C. Macro facilities must be screened or camouflaged employing the best available technology, such as compatible materials, location, color, artificial trees and hollow flagpoles, and other tactics to minimize visibility of the facility from public streets and residential properties.

1. 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:

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

(b) Using existing or new site features as a background in a way that the macro facility blends into the background;

2. As a condition of permit approval, the City may require the applicant to supplement existing trees and mature vegetation to screen the facility.

3. 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 must be approved by the City as part of permit approval.

4. 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.

D. Equipment facilities shall be placed underground if applicable, or, if above ground, shall:

1. Be screened from any street and adjacent property with fencing, walls, landscaping, structures or topography or a combination thereof; and

2. Not be located within required building setback areas.

E. If a security barrier is installed that includes a fence, wall or similar freestanding structure, the following shall apply:

1. The height of the barrier shall not exceed six and a half (6.5) feet if located in a setback area, unless the Director determines additional height is necessary and then it can be up to 8 feet. In all other areas the height shall be restricted by the height limitations in the zoning district. The height is measured from the point of existing or finished grade, whichever is lower at the exterior side of the barrier to the highest point of the barrier.

2. Be screened from adjoining properties and city right-of-way through the use of appropriate landscaping materials including:

(a) Placement of landscape vegetation shall include areas outside of the barrier and shall obscure the site within 3 years; and

(b) Landscaping and the design of the barrier shall be compatible with other nearby landscaping, fencing and freestanding walls; and

3. If a chain link fence is allowed in the zone district it shall be black vinyl.

F. Macro facilities may not (i) produce noise in excess of the limitation set forth in MCMC Chapter 9.14; and (ii) not be used for mounting signs, billboards or message displays of any kind.

G. The Director shall consider the cumulative visual effects of macro facilities mounted on existing structures and/or located on a given permitted site in determining whether the additional permits can be granted so as to not adversely affect the visual character of the city.

17.29.100 Expiration of macro facility permit.

A. A macro facility permit issued under this chapter must be substantially implemented within three (3) years from the date of final approval or the permit shall expire. The holder of the permit may request one (1) extension to be limited to twelve (12) months, if the applicant cannot construct the small wireless facility within the original three (3) year period.

17.29.110 Appeals.

A. Appeals of decisions under MCMC Title 17.29 shall be filed and processed pursuant to MCMC Title 14.

Article III. ELIGIBLE FACILITIES REQUEST

17.29.120 Definitions.

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this Section 19.25.170.

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

- a. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - b. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small wireless networks).
 - c. Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subparagraph (i) and (ii) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
 - d. The term does not include any structure that, at the time the Eligible Facilities Request application is filed with the City, does not support or house equipment described in subparagraph (1)(a) and (1)(b) above.
2. “Collocation”: The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.
 3. “Eligible Facilities Request”: Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - a. Collocation of new transmission equipment;
 - b. Removal of transmission equipment; or
 - c. Replacement of transmission equipment.
 4. “Eligible support structure”: Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.
 5. “Existing”: A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
 6. “Substantial Change”: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
 - a. For towers other than towers in the public right-of-way, it increases the

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

b. For towers other than towers in the public right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

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

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

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

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

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

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

17.29.130 Application.

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

17.29.140 Qualification as an Eligible Facilities Request.

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

17.29.150 Timeframe for review.

Applications for an Eligible Facilities Request are reviewed by the Director or his/her designee, who will approve the application within sixty (60) days of the date an applicant submits an Eligible Facilities Request application, unless the Director or designee determines that the application does not qualify under MCMC Section 1. Article III.17.29.120A.3

17.29.160 Tolling of the time frame for review.

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

1. To toll the timeframe for incompleteness, the City shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.
2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
3. Following a supplemental submission, the City will notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

17.29.170 Determination that application is not an Eligible Facilities Request.

If the City determines that the applicant's request does not qualify as an Eligible Facilities Request, the City shall deny the application.

17.29.180 Failure to act.

In the event the City fails to approve or deny an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant

does not become effective until the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

Article IV. SMALL WIRELESS FACILITIES

17.29.190 Application requirements for small wireless facilities.

A. **Applicability.** Any application for a small wireless facility both inside and outside of the right-of-way shall comply with the application requirements for a small wireless facility permit described in this Chapter. For small wireless facilities inside the right-of-way, the applicant must also comply with the requirements pursuant to MCMC 12.16 Article VII.

B. **Consolidated Permits.** All permits, leases, and right-of-way use authorizations necessary for the deployment of small wireless facilities and, if applicable an application for franchise, shall be consolidated for review and a decision rendered to the full extent feasible with the presumptively reasonable time periods established by federal law.

C. **Overview.** In order to manage its right-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City, the City of Mill Creek has adopted this administrative process for the deployment of small wireless facilities. The City and an applicant for a franchise and other permits associated with the deployment of small wireless facilities face challenges in coordinating applicable legislative and administrative processes under the Federal Communications Commission (FCC) regulations. A franchise for the use of the City's right-of-way is a contract which requires approval by the City Council. The small wireless permits are issued by the Director.

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

1. **Franchise.** The process typically begins with and depends upon approval of a franchise for the use of the public right-of-way to deploy small wireless facilities if any portion of the applicant's facilities are to be located in the right-of-way, consistent with the requirements in MCMC 12.14. An applicant with a franchise for the deployment of small wireless facilities in the City may proceed to directly apply for a small wireless facility permit and related approvals. An applicant may utilize phased development.

2. **Small Wireless Facility Permits.** The application requires specification of the small wireless facility components and locations as further required in the small wireless permit application described in subsection E below. Prior to the issuance of a small wireless facility permit, the applicant shall pay a permit fee as set forth in MCMC 3.42.180.A.20.

3. **Associated Permit(s).** The applicant shall attach all associated permits requirements such as applications or check lists required under the Critical Areas, Shoreline or SEPA ordinances. Applications for deployment of small wireless facilities

on Decorative Poles or for new poles shall comply with the requirements in MCMC 17.29.250.

4. Leases. An applicant who desires to attach a small wireless facility on any utility pole or light pole owned by the City shall include an application for a lease as a component of its application. Leases for the use of utility poles, light poles, or other public property, structures or facilities shall be submitted to the City Council for approval.

E. Small Wireless Permit Application. The following information shall be provided by all applicants for a small wireless permit.

1. The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:

- (a) The location of overhead and underground public utilities, telecommunication, cable, water, adjacent lighting, sewer drainage and other lines and equipment within 50 feet of the proposed project area (which the project area shall include the location of the fiber source and power source). Further, the applicant shall include all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 50 feet of the proposed project area.
- (b) The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.
- (c) The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small cell facility, to the extent to which the applicant is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements. Where another party is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements, applicant's construction drawings will include such utilities to the extent known at the time of application, but at

a minimum applicant must indicate how it expects to obtain fiber and electric service to the small cell facility.

(d) If the site location includes a new replacement light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk within 150 feet of the existing light.

(e) Compliance with the aesthetic requirements of MCMC 17.29.260.

2. The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards, as well as assurances that the specific pole can withstand wind and seismic loads, from the pole owner, unless the pole owner is the City. Submission of the lease agreement between the owner and the applicant is not required. For city-owned poles or structures, the applicant must obtain a lease from the City prior to or concurrent with the small wireless permit application and must submit as part of the application the information required in the lease for the City to evaluate the usage of a specific pole.

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

4. Any application for a small wireless facility located in the right-of-way adjacent to a parcel zoned for residential use shall demonstrate that the applicant has considered the following:

(a) Whether a small wireless facility is currently installed on an existing pole in front of the same residential parcel. If a small wireless facility exists, then the applicant must demonstrate that no technically feasible alternative location exists which is not in front of the same residential parcel.

(b) Whether the proposed small wireless facility can be screened from residential view by choosing a pole location that is not directly in front of a window or views.

5. Any application for a small wireless permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and MCMC Chapter 18.04. Further, any application proposing small wireless facilities in Critical Areas (pursuant to MCMC Chapter 18.06) must indicate that the application is exempt or comply with the review processes in such codes.

6. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facilities will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the Small Wireless facility will operate. If facilities which generate RF radiation necessary to the Small Wireless facility are to be provided by a third party, then the small wireless permit shall

be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.

7. 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.

8. 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.

9. A traffic control plan as required by MCMC 12.16.1400 and right of way work permit as required by MCMC 12.16.1370.

10. Proof of a valid Mill Creek Business License.

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

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

17.29.200 Review criteria.

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

1. 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 standards adopted pursuant to Article IV, except as provided in subsection B below.

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

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

fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

4. No equipment shall be operated so as to produce noise in violation of MCMC Chapter 9.14.

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

B. Public Works and Development Services Department. All small wireless facility deployment applications shall be reviewed by the Director pursuant to MCMC Section 14.09.010. The Director's decision shall be final and is appealable pursuant to MCMC Chapter 14.11

C. Eligible Facilities Requests. The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded upon submittal of an Eligible Facilities Request described in MCMC 17.29.050, when the modification does not defeat the concealment elements of the small wireless facility.

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

E. Withdrawal. Any applicant may withdraw an application submitted pursuant to MCMC 17.29.190 at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or their successors in interest. When a withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs prior to the Director's decision, then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of City costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Director's decision, there shall be no refund of all or any portion of such fee.

F. Supplemental Information. Failure of an applicant to provide supplemental information as requested pursuant to MCMC 17.29.190 by the Director within sixty (60) days of notice by the Director shall be deemed a denial of that application, unless an extension period has been approved by the Director.

17.29.210 Permit requirements.

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

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

C. Permit Time Limit. Construction of the small wireless facility must be completed within twelve (12) months after the approval date by the City. The grantee may request one (1) extension to be limited to twelve (12) months, if the applicant cannot construct the small wireless facility within the original twelve (12) month period.

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

E. Operational Activity. The grantee shall commence operation of the small wireless facility no later than one (1) year after installation.

17.29.220 Modifications to small wireless facilities.

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

B. A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility within the right-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 used in the original deployment of the small wireless facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a small wireless facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small wireless facility. Right-of-way use permits may be required for such routine maintenance, repair or replacement consistent with MCMC 12.16.

17.29.230 Consolidated permit.

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

B. To the extent they do not conflict with the requirements of this chapter, the general

standards applicable to the use of the right-of-way described in MCMC 12.16 shall apply to all small wireless facility permits.

17.29.240 Hierarchy for small wireless facilities.

The City’s preference is for applicants to attach small wireless facilities to replacement light poles. If a light pole exists within 150 feet of a wooden pole, the applicant shall utilize the light pole unless the applicant can demonstrate, to the satisfaction of the Director, that the light pole has been evaluated and is not possible for either technical feasibility or aesthetic reasons. However, this requirement shall not apply if the light pole is a Decorative Pole, as designated in MCMC 17.29.250.

17.29.250 Decorative Poles for small wireless facilities.

A. The City desires to discourage the use of certain decorative poles for small wireless facilities due to the aesthetic impact to the city’s streetscape. Accordingly, the following types of poles (herein referred to as “Decorative Poles”) as designated in the Standard Specifications and Details are discouraged from use for small wireless facilities: (i) Architectural Lighting Commercial Street Light (LGT-4), (ii) Architectural Lighting Residential Street Light (LGT-5), and (iii) Candela Commercial Housing Street Light (LGT-6).

B. Applications for small wireless facilities attached to Decorative Poles must comply with MCMC 17.29.270 below.

17.29.260 Design and concealment standards for small wireless facilities.

Small wireless facility deployments permitted in accordance with this chapter shall conform to the following design standards:

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

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

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

- (a) Concealed completely within the pole or pole base. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design. If within the pole base, the base shall meet the ADA requirements and not impact the pedestrian access route.
- (b) 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.
- (c) Located on a pole. If located on a pole, antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning no more than six (6) inches off of the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. The equipment enclosure and all other wireless equipment associated with the pole (including but not limited to conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs. The applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than six (6) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole.
- (d) On private property. If located on private property, the applicant shall submit a copy of an executed easement or lease agreement with the private property owner prior to the small wireless facility permit issuance.

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

4. All conduit, cables, wires and fiber must be routed internally in the non-wooden pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.

5. An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a

continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.

6. Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

7. 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; provided that the height of the replacement pole cannot be extended further by additional antenna height.

8. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 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 base of the pole, and shall comply with the requirements in subsection E(4) below.

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

B. Wooden pole design standards. Small wireless facilities located on wooden poles shall conform to the following design criteria:

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

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

3. Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.
4. Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.
5. Antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.
6. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume.
7. A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection B(1) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.
8. The furthest point of any antenna or equipment enclosure may not extend more than twenty-four (24) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.
9. An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.
10. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.
11. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (E)(1). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the

pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

12. An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs, provided that such location does not interfere with the operation of the banners or signs.

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

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

15. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements.

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

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

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

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

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

4. Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
5. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
6. Small wireless facilities shall be painted and textured to match the adjacent building surfaces.

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

1. Each strand mounted facility shall not exceed three (3) cubic feet in volume;
2. Only one strand mounted facility is permitted per cable between any two existing poles;
3. The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater distance is technically necessary or is required by the pole owner for safety clearance;
4. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
5. Ground mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and
6. Pole mounted equipment shall comply with the requirements of subsections A and B above.
7. Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).
8. Strand mounted facilities are prohibited on non-wooden poles.

E. General requirements.

1. Ground mounted equipment in the right of way is prohibited, unless the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the right-of-way are prohibited.
2. No equipment shall be operated so as to produce noise in violation of MCMC Chapter 9.14.

3. Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC §§ 253 and 332.
4. Small wireless facilities are not permitted on the following types of poles: Bollard Path Lights, Teka Pedestrian Path Lights, and Candela Pedestrian Path Lighting.
5. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the right-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.
6. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.
7. No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches); provided that, signs are permitted as concealment element techniques where appropriate.
8. Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.
9. Side arm mounts for antennas or equipment must 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.
10. The preferred location of a small wireless facility on a pole is the location with the least visual impact.
11. Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached.
12. Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use in the residential zones.
13. 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.

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

17.29.270 New poles in the right-of-way for small wireless facilities and installations on Decorative Poles.

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

1. The proposed small wireless facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public right of way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;
2. The proposed small wireless facility complies with the applicable requirements of MCMC 17.29.260(E);
3. The proposed small wireless facility receives approval for a concealment element design, as described in MCMC 17.29.270(C) below;
4. The proposed small wireless facility complies with SEPA, if applicable; and
5. No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance (MCMC Title 18.06), except when determined to be exempt pursuant to said ordinance.

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

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

1. 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 2 below.

2. If the Director has already approved a concealment element design either for the applicant or another small wireless facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or 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 3 below.

3. 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 (for example if a Candela Commercial Housing Street Light, then the replacement pole should match that pole design), unless the Development Services Department otherwise approves a variation due to aesthetic or safety concerns. Any concealment element design for a small wireless facility should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the pole. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color, and texture - or the appearance thereof - as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure.

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

E. Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole or ground mounted equipment. 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.

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

17.29.280 Appeals.

Appeals related to small wireless facilities permit decisions located in the right-of-way shall be filed in Snohomish County Superior Court, all other appeals shall be filed and processed pursuant to MCMC Chapter 14.11.

Section 5. Severability. If any section, sentence, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 6. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

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

ADOPTED IN OPEN MEETING OF THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON THIS _____ DAY OF FEBRUARY, 2019.

Pam Pruitt, Mayor

Attested to by:

Approved as to form:

Gina Pfister, City Clerk

Scott Missall, City Attorney