ORDINANCE NO. 4846

AN ORDINANCE RELATING TO WIRELESS COMMUNICATION FACILITIES AND ADDING A PERMANENT CHAPTER TO THE ELLENSBURG CITY CODE ENTITLED "15.395 WIRELESS COMMUNICATIONS FACILITIES"

WHEREAS, contemporaneous with the consideration of this Ordinance, the City Council revised franchising and permitting procedures in order to provide for the deployment of small wireless facilities and establish time limits for the consideration of permits in accord with federal laws such as 47 USC § 1455(a), 47 CFR §§ 1.40001 and 1.6003; and

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

WHEREAS, the adoption of the contemporaneous franchise revisions and approval timelines requires integration with the City's zoning code in order to provide for design guidelines for use in small wireless permitting as well as processes to be used in the consideration of applications subject to federal time restrictions such as Eligible Facilities Requests; and

WHEREAS, on February 4, 2019, City Council adopted Ordinance 4823, implementing interim zoning controls for wireless communication facilities as an emergency measure under the procedures in RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, on August 5, 2019, City Council adopted Ordinance 4832 to extend the interim wireless communication facility regulations through February 5, 2020; and

WHEREAS, RCW 35A.63.220 and 36.70A.390 authorize cities to establish interim zoning controls in circumstances such as those described above; and

WHEREAS, the proposed amendments to the Ellensburg City Code were issued a SEPA Determination of Non-Significance on December 10, 2019; and

WHEREAS, pursuant to RCW 36.70A.106, notice of the City's intent to amend the Land Development Code was sent to the Washington State Department of Commerce; and

WHEREAS, the required Washington State Department of Commerce 60-day notice was complete on November 22, 2019; and

WHEREAS, the proposed ordinance was reviewed by the Planning Commission in a public hearing on November 14, 2019, and based on public testimony and other evidence received at said hearing, the Planning Commission recommended City Council adoption of the ordinance; and

WHEREAS, the City Council conducted a public hearing on December 16, 2019, where it

received and considered public comments on the proposed changes; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Title 15 of the Land Development Code of the Ellensburg City Code, as last amended by Ordinance 4832, is hereby amended by adding a new chapter entitled "Chapter 15.395 Wireless Communication Facilities" to read as follows:

Chapter 15.395
WIRELESS COMMUNICATION FACILITIES

Sections

15.395.010 Purpose.

The purpose of this chapter is to set forth the regulations for the placement, development, permitting, and removal of wireless communications facilities, including support structures and antennas. Among the purposes included are to:

A. Minimize potential adverse visual, aesthetic and safety impacts of wireless communications facilities.

B. Establish objective standards for the design and placement of wireless communications facilities.

C. Ensure that such standards allow competition and do not unreasonably discriminate among providers of functionally equivalent services.

D. To the extent possible, the design of such facilities shall be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.

E. To the extent possible, the location of large scale wireless communications support structures shall be in industrial, nonresidential mixed use and commercial areas outside of the historic districts.

F. To the extent possible, the collocation or attachment of wireless communications antennas shall be on existing support structures to help minimize the total number and impact of such structures throughout the community.

15.395.020 Definitions.

See 11.41.020 ECC for additional definitions for terms utilized in this chapter.

"Antenna," "Antenna Equipment," and "Antenna Facility" are defined in accordance with 47 CFR § 1.6002 (b), (c) and (d).

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

"Antenna support structure" means a freestanding structure or device specifically designed, constructed and/or erected to support a WCF antenna and may include, but is not limited to, a monopole or guy-wire support tower. Lattice towers are specifically prohibited. Antenna support structure does not include attachment support structures, nor a preexisting utility pole not built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antenna.

"Collocation," when used in the context of an eligible facilities request in Chapter 11.80 ECC, means the mounting or installation of transmission equipment on an eligible support structure for

the purpose of transmitting and/or receiving radio frequency signals for communication purposes. When used in the small wireless permitting process, "collocation" means mounting or installing an antenna facility on a pre-existing structure and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

"Equipment structure" means 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.

"Macro facility" means a wireless communication facility other than a small wireless facility.

"Small wireless facilities" are facilities that meet each of the following conditions:

(1) The facilities:

(a) are mounted on structures 50 feet or less in height including their antennas as defined in 47 C.F.R. § 1.1320(d), or

(b) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in 47 C.F.R § 1.1320(d)) is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR § 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

"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 personal wireless service (whether or not on its own or comingled with other types of service.

"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 included, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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

"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.

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

15.395.030 General provisions.

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

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

15.395.040 Applicability.

A. Wireless telecommunication facilities shall be permitted as established in the underlying zoning district use table, provided, however, that small wireless facilities located pursuant to a valid small wireless facility permit are outright permitted uses in every zone of the City.

B. The following are exempt from the provisions of this chapter:

1. Wireless communication facilities utilized by a governmental agency for governmental purposes and not for resale or lease to the public within its area of jurisdiction.

2. Amateur radio towers and antenna arrays to the full extent necessary to entitle the holder of the license to utilize the rights granted by the Federal Communications Commission; provided, that this exemption applies only if an antenna and supporting structure are greater than thirty-five feet in height in order for the full enjoyment of licensed activity and is of a telescoping or crank-up configuration and which, when not in use, is fully retracted to a level at or below thirty-five feet in height.

3. Television antennas, television dish antenna array and similar small-scale communication antenna array less than ten feet in height when measured from its base.

15.395.050 Location considerations.

The location priority for new wireless telecommunication facilities shall be in the following order:

A. In all zoning districts, collocate on existing wireless telecommunication facilities.

B. In all zoning districts, collocate antennas on utility structures (i.e., power poles), or other existing buildings and structures, such as water towers.

C. Place new wireless telecommunication facilities in districts zoned for industrial or non-residential mixed use.

D. Place new wireless communication facilities in the Public Reserve Zone.

E. Place within residential zoning districts only when collocating or an applicant has proven that denial of the location would be a prohibition or effective prohibition of telecommunications services in violation of 47 USC §§ 253 and 332.

F. Place within the historic districts as a last resort only when no other site is available, and denial of the location would be a prohibition of telecommunications services in violation of 47 USC §§ 253 and 332.

15.395.060 Application requirements.

In addition to other applicable requirements established by ordinance or rule for any other approval or permit consolidated with an application for review, applications shall include the following:

A. Site and landscape plans drawn to scale, including the location of existing structures, trees, and other significant site features; proposed color of the facility; method of fencing; finished color and, if applicable, the method of camouflage and illumination.

B. A report including description of the facility with technical aspects for its design.

C. Documentation establishing the structural integrity for the facility's proposed use.

D. The general capacity of the tower and information necessary to assure that ANSI standards are met.

E. A statement of intent on whether the excess space on the facility will be leased.

F. Proof of ownership of the proposed site or authorization to utilize it.

G. Copies of any easements necessary.

H. An analysis of the area containing existing topographical contours.

I. Photo simulations of the proposed facility from affected properties and public rights-of-way.

15.395.070 Development standards for wireless communications facilities other than small wireless facilities.

A. Landscaping and Screening.

1. In all zones, equipment shelters, cabinets and other on-the-ground ancillary equipment shall be constructed with a use separation buffer of a minimum of twenty (20) feet in residential zones and ten (10) feet in all other zones. The director or his/her designee may increase the width of this buffer if it is determined additional buffering is necessary to further mitigate the impact of the ground equipment. Further, the buffer shall be contained in a recorded easement.

2. Fencing shall be required around the ground facilities and be located within the required separation buffer. The fence shall be constructed in accordance with the requirements of ECC 15.320.120.

3. In residential zones, and in other zones where the wireless telecommunication facility is within three hundred feet of a residential zone, the ground level view of support structures shall be mitigated by the retention of existing trees with sufficient height that will provide a functional screen of a substantial portion of the facility. Additional landscaping and screening may be required by the director or his/her designee to mitigate the visual impact of the ground level view of the support structure if the existing trees do not provide an adequate functional screen or if no trees are on the subject site to provide the functional screen. A street tree permit is required per ECC 4.36.300 for any planting, removal, topping, and/or major pruning of street trees. Existing trees on adjacent properties or within right-of-way cannot be utilized to meet this requirement.

B. Visual Impact.

1. Wireless communication facilities shall be camouflaged by employing the best available concealment technology. This may be accomplished by use of compatible materials, location, color, stealth technologies, and/or other strategies to minimize visibility of the facility as viewed from public streets or residential properties to the maximum extent

feasible and consistent with the technology and intended use of the facility. When attached to an existing building, the wireless telecommunication facility shall be placed and colored so as to blend into the architectural detail and coloring of the structure.

2. A visual impact analysis shall be required when a new wireless telecommunication facility is proposed to be located within a residential zone or within three hundred feet of a residential zone, or if the facility is anticipated to constitute more than a moderate visual impact as described above. The impact analysis will be accomplished through: (a) erection of a crane; (b) a balloon (of a size not less than four feet); or (c) similar device used to simulate the proposed dimensions and height of the structure.

3. Ten working days prior to the demonstration, the applicant shall notify the city and provide a courtesy informational notice to properties within three hundred feet of the subject site upon which the visual impact test will be conducted. The potential impact shall be documented through submittal of maps, photographs, photo-simulation, and other appropriate methods.

4. Ground-mounted equipment cabinets shall meet all applicable standards relating to sight triangle and sight visibility to ensure these facilities do not obstruct or affect vehicular or pedestrian traffic.

C. Color and Lighting.

1. Wireless telecommunication facilities shall be painted in a nonreflective color that best allows them to blend into the surroundings.

2. Flashing red, solid red, or white strobe lighting shall not be allowed on any support structure except those included in permanent 911 public safety communication facilities, located at ground elevations above seven hundred feet, and more than one-half mile from any residential zone. Any structure subsequently determined by the Federal Aviation Administration (FAA) to require flashing red, solid red, or white strobe lighting shall be altered to avoid the lighting requirements.

3. Appropriately down shielded security lighting which is directed away from adjoining properties is permitted for the equipment shelters, cabinets, and/or other ground ancillary equipment. No more than one foot-candle of illumination may leave the property boundaries.

D. Electromagnetic Field/Radio-Frequency Radiation Standards. The applicant shall provide certification by qualified Radio Frequency (RF) engineer that Installation of wireless telecommunication facilities will conform to the standards required by the FCC regulations and the Telecommunication Act of 1996.

E. Collocation of Facilities. All new wireless telecommunication facilities shall be designed to accommodate collocation of at least two additional carriers. Further, an approved wireless telecommunication provider cannot deny a wireless provider the ability to collocate on an approved facility at a fair market value or at another cost agreed to by the affected parties.

F. Discontinuation of Use. Any wireless telecommunication facility that is no longer needed and its use is discontinued shall be reported immediately by the service provider to the city. Discontinued facilities shall be completely removed by the service provider or the property owner within six months from the time of discontinuance.

G. Small wireless facilities are regulated pursuant to Chapter 11.70 ECC, and Section 15.395.090, *et. seq.*

15.395.080 Administrative use findings.

In addition to the requirements in Section 15.395.050, the following findings relative to wireless telecommunication facilities are hereby required:

A. The proposed wireless telecommunication facility and ground facilities have been reviewed appropriately, have satisfied all the provisions of this chapter and any negative aesthetic impacts have been adequately mitigated.

B. Failure to approve any proposed significant deviation from aesthetic standards established by this chapter would have the effect of effectively prohibiting the provider from providing telecommunication service in violation of 47 USC §§ 253 and 332.

C. In applying these criteria, the director shall not interpret and apply them in a manner which dictates 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 protection of the visual environment.

15.395.090 Aesthetic design and concealment standards for small wireless facilities deployments.

Small wireless facilities deployments permitted pursuant to Chapter 11.70 ECC shall conform to the following aesthetic design and concealment standards:

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

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

2. All conduit, cables, wires and fiber must be routed internally in the light pole. To the full extent technically feasible, full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.

3. An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.

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

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

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

7. The use of the pole for the siting of a small 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 permission is 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 permission is confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A "pole extender" as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

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

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

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

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

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, unless a greater height is required to meet the technical requirements of the facility, provided that such greater height shall not exceed the minimum necessary to meet the technical need and requirements. 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 twenty (20) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.

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

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

10. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (D)(5). 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 antenna and any pre-existing associated equipment on the pole may not may not exceed twenty-eight (28) cubic feet in total volume. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole if such banners or road signs are allowed by the pole owner.

11. An applicant who desires to enclose its antennas and equipment within a unified enclosure may do so, so long as the facility meets the volumetric requirements of a small wireless facility. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs. The unified enclosure may not be placed more than twenty (20) inches from the surface of the pole unless a further distance is technically required and confirmed in writing by the pole owner.

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

13. The use of the wooden pole for the siting of a small 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 unless retention of the pole is necessary to prevent an effective prohibition of service.

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

C. Small wireless facilities attached to existing buildings. 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.

7. Upon review by city staff, it may be determined that an application for a small wireless facility proposing to locate on an individually landmarked structure, or on a structure within a historic district, may also meet the criteria in Chapter 15.280 ECC requiring an application for a Certificate of Appropriateness (a Type II review process) from the Landmarks and Design Commission.

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 on existing cable;

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 B and D 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 stand.

E. General requirements.

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

2. No equipment shall be operated so as to produce noise in violation of Chapter 5.60 ECC.

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

4. Replacement poles and new poles shall comply with the ADA, city construction and sidewalk clearance standards, and state and federal regulations in order to provide a clear and safe passage within the rights-of-way.

5. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole at the applicant's cost.

6. The design criteria as applicable to small wireless facilities described herein shall be considered concealment elements and such small wireless facilities may only be expanded upon an eligible facilities request described in Chapter 11.80 ECC, when the modification does not defeat the concealment elements of the facility.

7. No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna, and any such signage on equipment enclosures shall be of the minimum amount possible to achieve the intended purpose and in conformance to the Public Works Development Standards for Small Wireless Facilities.

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

9. Side arm mounts for antennas or equipment are prohibited. No antenna, antenna equipment or equipment box may extend more than twenty (20) inches from the face of the pole or support structure.

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

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

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

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

F. New poles in the rights-of-way for small wireless facilities and installations in the historic districts.

1. New poles within the rights-of-way 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 in an alley, electrical transmission tower or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;

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

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

d. No new poles shall be located in a critical area or associated buffer required by the city's critical areas ordinance (Division VI of Title 15 ECC), except when determined to be exempt pursuant to said ordinance.

2. An application for a new pole in the right-of-way is subject to an administrative use permit type 1 review.

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

a. The concealment element design should seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including to the extent technically feasible similar height. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color and texture – or the appearance thereof – as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure or otherwise integrated into the design of the structure. Use of a unified enclosure equal to or less than four (4) cubic feet in volume may be permitted in meeting these criteria.

b. If the director has already approved a concealment element design either for the applicant or another wireless communications facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.

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

5. Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the city to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed wireless communications facility is more than fifty (50) feet.

6. Installation of small wireless facilities in the historic districts shall be permitted by an administrative approval of a concealment plan utilizing the design and concealment standards contained in this chapter.

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

15.395.100 Independent technical review of wireless communications facilities applications.

The city may retain the services of an independent technical expert of its choice to provide technical evaluation of permit applications for WCFs. The applicant shall pay all the costs of said review. Such third-party expert review is intended to be a site-specific review of technical aspects of the WCF permit application and not a subjective review of the WCF proposal. The city reviewing authority shall consider the request when imposing conditions on approval. Nothing herein shall be interpreted to permit regulation of radio frequency emissions or interference to limit or dictate the applicant's technological choices.

15.395.110 Wireless communications facilities removal.

A. Owners and operators of wireless communications facilities shall provide the director with copies of any notice of intent to cease operations provided to the Federal Communications Commission.

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

C. Removal upon Undergrounding. A wireless communications facility shall be removed at the owner's expense if collocated on a utility support structure that is subsequently undergrounded. No utility support structure may be maintained for the sole purpose of supporting a wireless communications facility unless an administrative use permit is obtained as provided herein or pursuant to Chapter 15.395.080 ECC. Retention of the utility support structure shall be based upon a showing that no other support structure is reasonably available, and retention of the utility support

structure is required to prevent an effective prohibition of service.

15.395.120 Appeals.

Wireless communications facilities permit decisions other than administrative approvals relating to small wireless permits and eligible facilities requests, are final Type III decisions. Approvals relating to small wireless facilities and eligible facilities requests are Type I administrative approvals and are not subject to administrative appeal. Appeal of a hearing examiner decision shall proceed directly to Kittitas County Superior Court. The timely filing of an appeal of a wireless communication facility permit decision shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

Section 2. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this Ordinance.

Section 3. Corrections. Upon the approval of the City Attorney, the City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 6th day of January, 2020.

MAYOR

ATTEST: Beth Leader
City Clerk

Approved as to form:

CITY ATTORNEY

Publish: 1-9-2020

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4846 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4846 was published as required by law.

Beth Leader

BETH LEADER