

ORDINANCE NO. 4824

AN ORDINANCE OF THE CITY COUNCIL RELATING TO THE CITY OF ELLENSBURG, AMENDING TITLE 11, CHAPTER 11.41 SPECIAL RULES APPLICABLE TO TELECOMMUNICATIONS FACILITIES AND TELECOMMUNICATIONS SERVICE PROVIDERS, ADDING NEW CHAPTERS 11.70 SMALL WIRELESS FACILITIES PERMITS, AND 11.80 ELIGIBLE FACILITIES REQUESTS AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, the City is in the process of revising code provisions relating to the use of the public right-of-way for small wireless facilities; and

WHEREAS, federal law has established “shot clocks” or time limits within which permits relating to small wireless facilities must be considered; and

WHEREAS, the City Council deems it to be in the public interest to adopt requirements for franchise applications to use the public rights-of-way,

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

**Section 1.** Chapter 11.41 of the Ellensburg City Code and Ordinance 4161, is hereby amended to read as follows:

**CHAPTER 11.41 SPECIAL RULES APPLICABLE TO TELECOMMUNICATIONS FACILITIES AND TELECOMMUNICATIONS SERVICE PROVIDERS**

Sections

11.41.010 Franchise for use of right-of-way; purpose.

11.41.020 Definitions.

11.41.040~~030~~ Application for a franchise; contents.

11.41.040 Completeness.

11.41.050 Public notice.

**11.41.010 Franchise for use of right-of-way; purpose.**

The city council as trustee of the city’s public right-of-way has the authority to authorize right-of-way use by utilities and other entities in order to serve the public if an agreement consistent with state and federal law and the best interests of the city and its citizens can be reached. This chapter establishes application requirements for a franchise for the use of the public right-of-way.

provisions for fee deposits and requirements for determining the completeness of applications for a franchise.

**11.41.020**     **Definitions.**

The following words and phrases shall have the meanings assigned for use in this chapter and in Chapters 11.70 and 15.395 ECC:

Director. The “director” is the city’s director of public works and utilities or such other person as the city manager may designate.

Franchise. A “franchise” is the contractual authorization whereby a public utility or other qualified service provider is granted permission to utilize the public right-of-way in order to provide services to the general public. A franchise is a master permit within the meaning of RCW 35.99.010(3).

Public Right-of-Way. “Public right-of-way” means land acquired or dedicated for public roads and streets but does not include:

1. State highways;
2. Road dedicated for road, streets, highways not opened and not improved for motor vehicle use by the public;
3. Structures including poles and conduits located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the state parks and recreation commission;
6. Federally granted railroad rights-of-way acquired under 43 USC § 912 and related provisions of federal law that are not open for vehicular use; or
7. Leasehold or city owned property to which the city holds fee title or other title, and which is utilized for park, utility or governmental or proprietary use.

Right-of-way use permit. A “right-of-way use permit” is an administrative permit issued to a franchisee to enter the right-of-way in order to exercise the rights granted under a franchise.

Small wireless facilities shall be defined in accordance with 47 CFR § 1.6002.

Structure. A “structure” for the purposes of this chapter and Chapter 15.430 ECC is 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 on its own or comingled with other types of service). Utility poles and light standards are types of structures that may be use for the deployment of small wireless facilities.

Telecommunication Facilities. “Telecommunication facilities” are those facilities defined in RCW 35.99.010(2), as currently enacted or is hereafter amended, and utilized by a provider in the provision of telecommunication service.

Telecommunication Service. “Telecommunication service” is defined as provided in RCW 35.99.010(7) as currently enacted or is hereafter amended.

11.41.010030 Application ~~for a franchise;~~ contents.

A. Contents of Application for Initial or Renewal Franchise. The application for a franchise must contain the following information, and such other information as the city may from time to time require:

1. Identity of the applicant; the persons who exercise working control over the applicant; and the persons who control those persons, to the ultimate parent.
2. A proposal for construction of a telecommunications facility that includes at least the following:
  - a. A general description of the services to be provided using the facility.

b. The location of the proposed facility and facility design to be placed in the public rights-of-way, including as applicable and to the extent known a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust and pollutants, if any, that will be generated by the operation of the same; provided, however, that if some of the descriptive data is not available at the time of application, the franchise may be issued subject to conditions that the data be filed and approved by the city before construction begins and that the franchise will be deemed to be forfeited if the data is not supplied and approved; provided further, as to information required by subsections (A)(2)(b) and (c) of this section, the following rules of confidentiality may apply:

i. In the event the application may require information that is a business or trade secret and/or proprietary information and the operator wishes to protect the information against disclosure, then the applicant shall provide the information to city in a separate envelope marked “Proprietary Information: DO NOT DISCLOSE.” The city will exercise good faith efforts to protect the confidentiality of the business or trade secrets or proprietary information designated as such; provided further, that (A) in the event a public disclosure request is made for information marked as proprietary, and if the city attorney determines that the information may be subject to disclosure; or (B) the city determines that the information should be disclosed in connection with its enforcement of any provision of this chapter, or in the exercise of its police or regulatory powers, then the city shall notify the applicant of the opportunity to seek a protective order from a court with appropriate jurisdiction. In the event a protective order is not obtained within 30 days or, if shorter, the time limitation set forth in state law, then the city may disclose the information. The applicant is obligated to reimburse and indemnify city for all costs, damages and attorney’s fees that may be awarded or assessed by the court for any actions the city may

take at the request of the applicant.

c. A map of the general route the facility will follow in the city's rights-of-way; a designation of the portions of the system in the rights-of-way that will be placed aboveground and that will be placed underground, and the construction techniques that the franchisee proposes to use in installing the system aboveground and underground; a schedule for construction of the facility, describing when and where construction will begin, how it will proceed, and when it will be completed; and the expected effect on right-of-way usage, including information on the ability of the public rights-of-way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities; provided, however, that any proprietary information required under this subsection as well as the preceding subsection shall be subject to the nondisclosure procedure prescribed in the proviso of the preceding subsection.

d. A description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.

e. Identification of the area of the city to be served by the proposed system, including a description of the proposed franchise area's boundaries. The entire city may be specified in appropriate instances such as a franchise for a small wireless facilities deployment.

3. Evidence satisfactory to the city that the applicant is technically qualified to construct, operate and repair the proposed facility.

4. Evidence satisfactory to the city that the applicant is legally qualified, including a demonstration that the applicant:

a. Has received, or is in a position to receive, necessary authorizations from state and federal authorities;

b. Has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows the city to conclude the applicant cannot be relied upon to comply with requirements of the franchise, or provisions of this chapter; and

c. Is willing to accept a franchise, pay required fees and abide by the provisions of applicable law, including those relating to the construction, operation or maintenance of its facilities; and has not entered into any agreement that would prevent it from doing so.

5. An affidavit or declaration of the applicant or authorized officer thereof certifying the truth and accuracy of the information in the application and certifying that the application meets all requirements of applicable law.

6. An applicant may show it would be inappropriate to deny it a franchise under subsection (A)(4)(b) of this section by virtue of: the particular circumstances surrounding the acts or omissions at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals, or the remoteness of the acts or omissions from the operation of telecommunications facilities.

7. Additional Information Regarding Affiliates. To the extent that the applicant is in any respect relying on the financial or technical resources of another person, including another affiliate, the proofs required by subsections (A)(4) and (5) of this section should be provided for that person.

8. A list of all cities or towns in the State of Washington in which the applicant holds a franchise. If more than five (5), the applicant will provide a list of the last five Washington franchises granted. All applicants shall provide a list of all cities in the state in which a franchise has been denied or revoked.

9. The director is authorized to adopt and publish additional technical and engineering requirements for applications seeking to attach to city-owned utility structures. ~~In an era of ever-evolving technology, the city council finds the need for periodic review of the~~

~~facilities utilized by applicants and their potential impact on city-owned infrastructure.~~

B. Presumptions. An applicant will be presumed to have the requisite financial, technical, or legal qualifications if its application shows that such qualifications have been reviewed and approved by the Washington Utilities and Transportation Commission or if the applicant is a holder of a franchise in the city for a cable system.

C. Applications for Transfer. An application for a transfer of a franchise must contain the same information required by subsection (A) of this section, except that if the transferor submitted an application under subsection (A) of this section, to the extent information provided by the transferor under subsection (A)(2) of this section remains accurate, the transferee may simply cross-reference the earlier application. The city may request such additional information as it finds necessary and require such modifications to the existing franchise as may be necessary to protect the public right-of-way. The application shall be subject to review by the city and any approval shall be subject to the city's determination that:

1. The applicant has the qualifications to construct, operate and repair the system proposed in conformity with applicable law;
2. The applicant will accept the modifications required by the city to its proposed telecommunications facilities to the extent necessary to protect the public right-of-way;
3. There will be no adverse effect on the public interest, or the city's interest in the franchise;
4. The transferee will agree to be bound by all the conditions of the franchise and assume all the obligations of its predecessor; and
5. Any outstanding compliance and fee issues will be resolved or preserved to the satisfaction of the city.

**11.41.040**      **Completeness**

Completeness of franchises other than those for small wireless facilities shall be determined in accord with standard city practice. The following completeness process shall apply to applications for small wireless facilities including all portions of the consolidated process described in ECC 11.70.010. On or before ten (10) days after submission of an application, the director shall notify the applicant if the application is materially incomplete. The notification shall clearly and specifically identify any missing documents or information and the rule or regulation creating the obligation to submit such documents or information. Any time limit imposed by federal law shall restart at zero on the date on which the applicant submits all documents and information identified by the director as necessary to render the application complete.

A. The notification from the director shall address any and all other permits consolidated with an application for franchise or small wireless permit approval.

B. For applications which have been resubmitted following a notice of deficiency, the tolling period shall be the number of days from:

1. The day after the date when the director notifies the applicant in writing that the supplemental submittal was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based upon the city's initial request, until the date when the applicant submits all documents and information identified by the citing authority to render the application complete;

2. Subsection 1(a) shall only apply if the notice pursuant to this section is effectuated on or before the tenth (10<sup>th</sup>) day after the date when the applicant makes the submittal a supplemental submission in response to the director's request.



**11.41.050**      **Public notice.**

The city shall provide notice of a complete application for a franchise on the city’s website with a link to the franchise application. This notice requirement shall also apply to existing franchisees applying for a small wireless facilities permit. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. The city shall post meeting notices, if any, for informational meetings on its website. This notice is for the public’s information and is not a part of any land use appeal process.

**Section 2.**      A new chapter entitled “11.70 Small Wireless Facilities Permits” is hereby added to the Ellensburg City Code, to read as follows:

Chapter 11.70  
**SMALL WIRELESS FACILITIES PERMITS**

Sections

- 11.70.010      Overview.
- 11.70.020      Application.
- 11.70.030      Review process.
- 11.70.040      Modifications to small wireless facilities.
- 11.70.050      Small wireless permit and minor deviations.
- 11.70.060      Significant deviations.
- 11.70.070      Additional review procedures.

**11.70.010      Overview; application.**

A. Definition of Small Wireless Facilities. “Small wireless facilities” are defined in 47 CFR § 1.6002(1), incorporated by reference in ECC 11.41.020. Small Wireless Facilities are low power facilities that facilitate the transmission by radio frequency of voice, video and data from and to cell phones and other mobile devices by augmenting the use of larger scale wireless communication towers and monopoles. Small wireless facilities are typically located on utility poles and other structures in the public right-of-way at or under 50 feet in height. Nothing in this general summary is intended to limit or expand the definition established by the federal regulation.

B. The city and applicant for a franchise and other permits associated with the deployment of small wireless facilities face challenges in coordinating applicable legislative and administrative processes under the Federal Communications Commission (FCC) regulations. A franchise for the use of the city's right-of-way is a contract which requires approval by the city council. Permits to exercise those rights and to install small wireless facilities on private property are considered in a parallel, consolidated administrative process. FCC regulation provides safe harbor time periods as well as completeness requirements which apply to all approvals relating to a small wireless facility deployment. Time limitations governing the process are triggered by the applicant's submittal of applications for the deployment. Accordingly, all parts of an application for a master permit to deploy small wireless facilities must be considered in order to determine completeness. Applicants are encouraged and expected to provide all related applications in one submittal.

B. 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. The application for a franchise is designated as Part A of the application. An applicant with a valid franchise for the deployment of small wireless facilities in the city may proceed to apply for small wireless facilities permit and related approvals (Parts B and C of the permitting process). An applicant at its option may utilize phased development. Because franchises are required by federal law to be competitively neutral, the city has established a franchise format for use by all right-of-way users. The format contains the basic requirements for the use of right-of-way. Consideration of the franchise application is a legislative act of the city council. Consideration by the city council shall run parallel with other necessary administrative approvals and approval or possession of a franchise is a requirement for any small wireless facility deployment seeking to use the public right-of-way.

2. Small Wireless Permits. Part B of the application process requires specification of all small wireless facility components and their sites. Each component shall be described in

detail as provided in these ordinances. Any request for deviation which is known to the applicant or which, through the exercise of reasonable diligence on the part of the applicant could be discovered, whether minor or significant, from adopted city standards, shall be set forth in the application.

3. Associated Permit(s). Part C of the application shall attach all associated permits such as applications or check lists required under the Critical Areas or SEPA ordinances Title 15, Division VI and Chapter 15.270 of the Ellensburg City Code, respectively. Applicants for deployment of small wireless facilities in city historic districts or underground areas shall provide a concealment plan as provided herein in ECC 15.395.090(F).

4. Construction in the Right-of-Way. Small wireless facilities installed pursuant to an approved master permit (both a franchise and a small wireless permit) or a small wireless permit approved separately for an existing franchisee may proceed to install the approved specific facilities. A small wireless permit functions as a right-of-way use permit.

5. Later Discovered Deviations. Recognizing that each utility pole represents a unique environment for the installation of small wireless facilities, if a deviation, whether minor or significant, is required from the standards of the ordinance in order to install a small wireless facility on any structure, and such deviation was not approved as part of the master permit or small wireless permit process, an application shall be filed for the amendment of the initial small wireless permit. Administrative review of the request for deviation shall be processed as provided herein. Such an amended application shall be considered a new application and completeness, review and all applicable time periods for review shall commence anew.

6. License. A wireless service provider who wishes to attach to any utility pole or other structure or building owned by the city shall enter into a small wireless facilities license agreement. The director is authorized to administer a license review process, develop an application form and approve license agreements in the form approved for general use by the city council for any utility pole or other structure in the right-of-way, including a new utility pole or structure. The installation shall conform to the standards adopted in ECC 15.395.090 or with an approved minor deviation. License agreements for the use of other

public property, buildings or facilities including any park land or facility shall be submitted to the city council for approval. Any approval identified in the initial application process shall be considered by the city council in conjunction with its consideration of the franchise. Applications submitted at later dates shall be considered by the director or the city council as provided herein under a separate review process.

C. Completeness. Any and all parts of an application for the deployment of small wireless facilities including but not limited to franchise, small wireless permits and all associated permits shall be submitted at one time in order that their completeness may be considered. An applicant seeking to phase deployment of a small wireless facilities system may identify the intended phasing in the franchise application process. Franchisees with a valid franchise to deploy small wireless facilities may apply for a small wireless permit for the deployment of initial or additional phases of a small wireless facility deployment at any time subject to the commencement of a new completeness review time period for permit processing.

D. Safe Harbors. The FCC in 47 CFR § 1.6003 has established presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities. The city shall make every reasonable effort consistent with any conflicting provisions of state or federal law, and the preservation of the city's health, safety and aesthetic environment to comply with these time periods to the fullest extent possible.

#### **11.70.020 Application.**

A. Applications for a franchise for small wireless deployment shall generally conform to the requirements of this chapter. The public works & utilities director, or such other department director as the city manager shall direct, is charged with administration of small wireless deployments established under this chapter. Service providers seeking to utilize the city's right-of-way for small wireless deployments shall specify the geographic boundaries for the small wireless deployment described in the application. The applicant may designate the entire city at its discretion or any portion thereof as the franchise boundary. Phased development is permitted, but an applicant is required to specify at least the initial small wireless deployment in its application.

B. The following additional information shall be provided by all applicants for franchises seeking to deploy small wireless facilities. Existing grantees who seek to utilize a small wireless deployment to expand or implement an existing franchise shall provide the information as a part of a Small Wireless Permit application for small wireless deployment.

1. Designation of Facilities. The application shall provide specific locational information including Geographic Information Systems (“GIS”) coordinates of all facilities to the extent known and specify whether and where small wireless facilities are to be located on existing utility poles including city-owned light standards, or will utilize replacement utility poles, new poles, towers, and/or other structures. To the extent known, conduit and/or ground-mounted equipment 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 an infrastructure provider. Detailed schematics and visual renderings of facilities sought to be approved by Franchise or Small Wireless Permit shall be provided by the applicant. Failure to provide sufficient detail may result in a later finding of a significant change in the facility if significant elements of the facility were not shown on the originally approved franchise exhibit. Failure to include significant elements may also result in the requirement that new or undocumented elements complete the approval processes detailed in this chapter and as applicable in Chapter 15.395 ECC.

2. Radio Frequency (“RF”) Certification. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless deployment 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 necessary to the Small Wireless Deployment are to be provided by a third party, then the Small Wireless Deployment in the initial franchise or in a subsequent Small Wireless Permit shall be conditioned on an RF Certification by the third party and the requirement that the third party obtain a franchise. If such facilities will emit RF emissions, this additional RF Certification shall address the cumulative impact of the RF emissions and certify compliance with federal requirements. The applicant or grantee shall immediately remove any facilities that exceed FCC RF Emissions requirements. A modification of the facility by an Eligible Facilities

Request requires a new RF certification.

3. Regulatory Authorization. Issuance of the right-of-way permit for the facilities shall also be contingent upon the applicant's provision of proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

**11.70.030 Review process.**

A. Director Approval. The director may approve, deny or conditionally approve all or any number of the sites proposed in the Small Wireless Permit Application.

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

C. 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 applicable regulatory and case law. Applicants for franchises and the small wireless permits shall be treated in a competitively neutral and non-discriminatory manner and 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 permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

D. Public Notice. The city shall provide notice of a complete application for a small wireless permit on the city's website with a link to the application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. Notice is for the public's information and is not a part of a hearing or part of land use appeal process.

E. Additional definitions. Additional definitions applicable to small wireless facilities may be found in Chapter 15.395 ECC.

**11.70.040 Modifications to small wireless facilities**

A. If an applicant desires to make modification to small wireless facilities, 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 permit.

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

**11.70.050 Small wireless permit and minor deviations.**

A. Utilizing the procedures established for Type Process I review in ECC 15.210.030(A), the director shall review applications for small wireless permits, including review by other city departments, for consistency with relevant franchise exhibits and design standards. In this review, the director may authorize minor deviations from the dimensional design and concealment technologies referenced in the exhibits to the franchise or design standards as follows:

1. A deviation in height of the pole of up to ten (10) feet above the height of the existing pole, or the height established for the zoning district, by the franchise or from a design approved for a historic district, may be permitted. Additional height may only be allowed to the extent necessary to allow the required safety clearance from electrical wires.
2. Deviations in the dimensions, height or volume of small wireless facilities which are necessary to conform the facilities to the requirements of the pole owner, provide adequate

safety clearances or address similar technical issues may be approved as minor deviations so long as they do not exceed the volumetric limitations provided by the definition of a small wireless facility in 47 CFR § 1.6002(l). Replacement of components of an existing, approved small wireless facility with components of differing dimension may also be approved as minor deviations provided, however, that in each instance the new or revised facilities do not defeat the aesthetic, design and concealment features set by the city's generally applicable pole design standard adopted pursuant to the franchise, Chapter 15.395 ECC, and/or as a concealment element under ECC 15.395.090(F).

B. The decision of the director to approve a Small Wireless Permit with a minor deviation, if any, shall be final and is not subject to appeal under city code or further legislative review.

**11.70.060 Significant deviations.**

Any request for significant deviations from the approved small wireless facilities design designated in the franchise, previously approved Small Wireless Permit or city's design standards shall be considered under the provisions of ECC 15.210.030(A), Type I process pursuant to the timelines established herein.

**11.70.070 Additional review procedures.**

Personal wireless service facilities/wireless communication facilities in historic districts, undergrounded areas or environmentally critical areas are subject to review as provided in ECC 15.395.090(F), Title 15, Division VI or Chapter 15.270 of the Ellensburg City Code as applicable.

**Section 3.** A new chapter entitled "11.80 Eligible Facilities Requests" is hereby added to the Ellensburg City Code, to read as follows:

**CHAPTER 11.80  
ELIGIBLE FACILITIES REQUESTS**

Sections

- 11.80.010 Purpose.
- 11.80.020 Eligible facilities requests.
- 11.80.030 Collocation.



**11.80.010 Purpose.**

Congress and the Federal Communications Commission (“FCC”) have, pursuant to the authority granted by 47 USC § 352(c) and 47 USC § 322(a), required local governments to act on wireless communication facility applications within a reasonable period of time and have established time limits or “shot clocks” for local review. The Washington State Legislature has also adopted similar limitations under the provisions of Chapter 35.99 RCW. Accordingly, the city adopts the following time limits for review of applications for eligible facility requests, small wireless permits, and other approvals for service providers of telecommunication services regardless of whether filed under this chapter or Chapter 15.395 ECC.

**11.80.020 Eligible facilities request.**

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

1. “Base station” is 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 back-up power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems (“DAS”) and small wireless networks); or

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 subsections (A)(1)(a) and (b) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

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

2. “Collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

3. “Eligible facilities request” is any request for modification of an existing tower or base station that does not substantially increase 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” means 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” means a constructed tower or base station that 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” is a modification that substantially changes the physical dimensions of an eligible support structure and meets any of the following criteria:

a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten (10) percent or by the height of one (1) 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 ten (10) percent or more than ten (10) feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than ten (10) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

c. For any eligible support structure, it involves installation of more than one (1) new equipment cabinet for the technology involved; or, for towers in the public streets and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten

(10) percent larger in height or overall volume than any other ground cabinets associated with the structure;

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 noncompliant only in a manner that would not exceed the thresholds identified above.

## B. Application Review.

1. Application. The director shall prepare and make publicly available an application form which shall be limited to the information necessary for the city to consider whether an application is an eligible facilities request. The applicant is not required to demonstrate a need or business case for the proposed modification.

2. Type of Review. Upon receipt of an application for an eligible facilities request pursuant to this chapter, the director shall review the application to determine whether it qualifies as an eligible facilities request.

3. Timeframe for Review. Within sixty (60) days of the date on which an applicant submits an application seeking approval under this chapter, the director shall approve the application unless he or she determines that the application is not covered by this chapter.

4. 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 director and the applicant or in cases where the director 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.

a. To toll the timeframe for incompleteness, the director 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.

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

c. Following a supplemental submission, the director will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

C. Determination That Application Is Not an Eligible Facilities Request. If the director determines that the applicant's request does not qualify as an eligible facilities request, the director shall deny the application. To the extent additional information is necessary, the director may request such information from the applicant to evaluate the application under other provisions of this chapter and applicable law.

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

E. Remedies. Both the applicant and the city may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

**11.80.030 Collocation.**

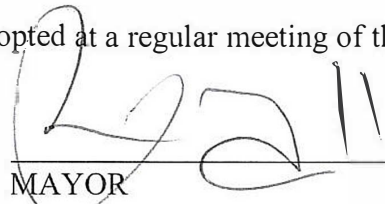
Eligible collocations (see ECC 15.395.020(D)) shall be processed within ninety (90) days of receipt of an application. The director will notify the applicant within thirty (30) days of receipt of an application whether it is complete or if additional information is required. The term collocation shall not apply to the initial placement of a small wireless facility on a tower or base station that was not in existence on the date the application was filed.

**Section 4. 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 5. 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 6. Effective Date.** This Ordinance shall take effect and be in force five (5) days after its passage.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 19<sup>th</sup> day of February, 2019.

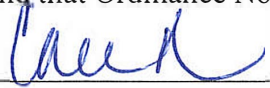
  
MAYOR

ATTEST:   
CITY CLERK

Approved as to form:  
  
CITY ATTORNEY

Publish: 2-23-19

I, Coreen M. Reno, City Clerk of said City, do hereby certify that Ordinance No. 4824 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4824 was published as required by law.

  
\_\_\_\_\_  
COREEN M. RENO