

**SEQUIM PLANNING COMMISSION****Regular Meeting / Public Meeting****Civic Center, 152 West Cedar Street****Sequim, WA 98382****3:00 P.M., Tuesday, Sept. 6, 2016**

Note the start time at 3:00PM!! (See agenda below for start of PC regular business)

Agenda

- 1. CITY COUNCIL WORK SESSION (3-5pm):** Staff suggests that all Commissioners attend the Council work session as observers of the staff presentation on the “drivers” of consistent regulatory implementation of the Comprehensive Plan.

BREAK: 15 Minutes

- 2. CALL TO ORDER, PLEDGE OF ALLEGIANCE & ROLL CALL (5:15pm):**

PC: Mahalick, Protze, Wiseman, Wendt, Janisse

- 3. APPROVAL OF MINUTES:** August 8 Special Meeting; August 16 Regular Meeting

- 4. PUBLIC MEETINGS (5:15PM):**

- Introduction to SMC Update for Adopted Stormwater Plan (Ann Soule, Resource Manager)
- Proposed text amendment to the Zoning Code: new SMC chapter 18.61 Wireless Communication Facilities. (Kristina Nelson-Gross, City Attorney)

- 5. NEW BUSINESS**

- 6. UNFINISHED BUSINESS**

- Zoning code update: Commission discussion of Council Special Meeting on proposed regulatory implementation of the Comprehensive Plan.

- 7. DIRECTOR’S REPORT**

- Pending appointments to fill PC vacancies: Appointment(s) at Council meeting of Sept. 12 (at earliest).

- 8. ITEMS FROM THE PUBLIC NOT ALREADY ON THE AGENDA**

- 9. GOOD OF THE ORDER**

- 10. ADJOURNMENT**

Next Meeting: Sept. 20, 2016.



SPECIAL MEETING AGENDA SEQUIM CITY COUNCIL

Sequim Civic Center
152 West Cedar Street
Sequim WA
September 6, 2016
3:00 p.m.

ROLL CALL

1. Bid award – Pavement Preservation Project
2. Zoning Text and Zoning Map Amendments to Implement the Comprehensive Plan

Public Comment – *Please limit comments to 3 minutes.*

5:00 Adjourn

PUBLIC COMMENTS

Although *no* public comment is *required* to be provided for at City Council meetings, City Council members have provided for two public comment periods.

Not all agenda items are appropriate for public comment. Matters which are or were the subject of a public hearing for which required notice was given are topics where public comment outside of the public announced hearing are not allowed by law. Matters that may affect liability for the City are not appropriate for comments from the public even though it may be an agenda item. Frequently questions from the audience to the council or to staff or to consultants are not appropriate to answer at a council meeting. The chairperson will explain when public comment is not appropriate as the need may arise. If you wish to comment on a Public Hearing item, please sign up on the specific Public Hearing sign-up sheet.

Public Comment Rules:

1. Come to the lectern; state your name, address, and topic for the record.
2. Please limit your comments to 3 minutes.
3. Please refer to the sign-in sheet for additional rules.

SEQUIM CITY COUNCIL AGENDA COVER SHEET

MEETING DATE: September 6, 2016

FROM: Chris Hugo, Director – DCD

CRH
Initials

SUBJECT/ISSUE: Zoning Text and Zoning Map Amendments to Implement the Comprehensive Plan (Consistency Update)

Discussion dates	July 25; Aug. 8, 2016		
CATEGORY	<input type="checkbox"/> City Manager Report <input type="checkbox"/> Public Hearing <input type="checkbox"/> Unfinished Business	<input type="checkbox"/> Information Only <input type="checkbox"/> Consent Agenda <input type="checkbox"/> New Business	Time Needed for Presentation and Discussion 90 Minutes
Reviewed by		Initials	Date
Charles P. Bush, City Manager			
Kristina Nelson-Gross		KNG	9/1/2016
Karen Kuznek-Reese, City Clerk		Kkr	8/31/16

PROBLEM/ISSUE STATEMENT: With the adoption of the Sequim 2015-2035 Comprehensive Plan in late 2015, the city’s development regulations need updating to implement the new Plan’s directions on growth and character of development. The extent of code changes needed to meet these new directions warrants this Council work session to prepare for future action in pending implementing regulations.

ATTACHMENTS:

[None: Staff will present a PowerPoint presentation to facilitate work session discussion.]

DISCUSSION/ANALYSIS: The Growth Management Act (GMA) was codified as state law in 1990 in an effort to better manage growth. The intent of the Act is to protect critical areas and rural lands, and to promote growth in urban areas, i.e., cities. In order to meet this obligation, the GMA requires local jurisdictions to prepare comprehensive plans. As part of this mandate, the GMA *requires* that local jurisdictions engage in significant public outreach in order to determine what the community’s vision entails. RCW 36.70A.140 of the GMA provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans.

GMA appeals to hearings boards and state courts have confirmed that plans and implementing regulations should be a reflection of the community's vision for future growth as developed through active public participation.

Once the comprehensive plan is adopted, the community's vision, including a growth strategy, is "set," and the local jurisdiction is expected to do the work necessary to bring the vision to reality. This is where development regulations enter the picture. The GMA requires all development regulations be consistent with the City's comprehensive plan. It is the development regulations that effectuate the community's vision, which is why the development regulations must be consistent with the comprehensive plan. Without this consistency, there can be no expectation that the community's vision will be realized. *"Communities express their desired futures through their plans; they get the futures that are in their codes."*

The City's new Comprehensive Plan proposes citywide changes to development patterns, densities, and land use districts. In this work session, the Council will review the foundations of zoning, how the new Plan's goals and policies direct the update of regulations, and the consequences if consistency isn't achieved. The Plan is based on a new growth framework and development strategy to give substance to the Vision and values from which it is derived. The Plan's Future Land Use Map (FLUM) presents the considerable changes to the land use patterns and districts throughout the city, including accommodating density where it is best connected to services and providing new opportunities for living-wage jobs and economic diversity. The FLUM is a direct reflection of the Plan's Goals and 220 Policies. To achieve these and the many other components of the growth strategy – and mandated plan / regulatory consistency – requires changes to all existing zoning classifications and the creation of some new ones. Every property in the city is affected in some way by the new Plan and the regulations needed to realize it.

This work session provides the Council opportunity to discuss what is required to attain regulatory consistency as well as be informed on the potential consequences if it is not achieved.

BUDGET IMPLICATIONS: None.

RECOMMENDATION: None.

MOTION: None.

**CITY OF SEQUIM
PLANNING COMMISSION MINUTES
SEQUIM CIVIC CENTER
152 WEST CEDAR STREET
SEQUIM, WA
AUGUST 8, 2016**

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE & ROLL CALL: PC:
Mahalick, Protze, Wiseman, Wendt, Janisse.

Commissioners present: Mahalick, Protze, Wiseman and Janisse; Wendt was excused.

2. APPROVAL OF MINUTES: July 19, 2016 - deferred to Aug. 16, 2016 meeting

Public Comment for items not on the agenda.

Robert Cain, 33 Mockingbird Lane, attended the neighborhood meeting for the Legacy Ridge Subdivision and asked about the location of the subdivision. Hugo said the first phase primarily fronts on 7th. Cain said the Council minutes of June 27, p. 2, indicated Council had a meeting with the developer. Cain had concerns about comments in the meeting indicating what was said at the meeting for the public would not be addressed in the public hearing. Hugo stated Legacy Ridge will be coming back for Planning Commission review. The proponents held the meeting to get information out to the public. It is not a "City hosted" event so it is not in the City record. Stormwater will be addressed by the City. It hasn't come forward yet because they have not submitted a proper plan. Legacy Ridge is vested to the prior to the new Comp Plan and falls under the old zoning code.

3. PUBLIC MEETINGS:

- a. Zoning code update: Text amendments to SMC 18.16.050 Boundary interpretation; 18.20.010 Establishment of districts; 18.20.020 Residential districts and uses; Table 18.44.020(C) - Bulk, Dimensional and General Requirements: Residential; 18.44.060 Road classifications; and 18.59.020 Residential garage, carport, shop, covered areas, and similar accessory structures to establish new R4-8 Single-Family Residential zone; and R-II, III, and IV map changes to new R4-8 Zone (recommendation to Council)

Public Comment:

Nancy Booth, 2489 Silver Oak, Palm Springs, CA, spoke about their property at N. Sequim Avenue and Port Williams Road. They recently became aware of potential rezoning of the property; she spoke about her concern for the change of the zoning. Her parents are Fred and Mary Booth. She respectfully requests the neighborhood zoning remain with the property.

Hugo stated on the land use plan Council adopted that the prior commercial corner was removed due to the Comp Plan policies. The change was rationalized in the Comp Plan. The time to object to that would have been when the Comp Plan was being revised by Council. Each year you can revisit the Comp Plan and if there is a need for change, you can apply to be put onto the docket for review in February. This process is according to state law.

Katie Gillis, real estate broker at Professional Real Estate in Sequim, stated she also was an appraiser for 16 years in Sequim. She had a client who built near the area is sorry because he hears traffic constantly. If the neighborhood builds out it will carry more traffic. If you make the corner residential instead of commercial, noise will be worse. From an appraisal standpoint the highest and best use of that area is as commercial, not as residential. The goal is to maximize property values, property appeal, and property functionality would be to develop the corner as commercial property accessible by pleasant avenues from the back side, avenues of accessibility. It would blossom to the adjoining corners. It would encourage people to walk and could be a user friendly area. In the Comp Plan it would help to make that a centerpiece example.

Thomas Booth, 4526 Pleasant Glade Road NE, Olympia, WA, stated some things he was going to say has already been said. He feels it is a safety issue with residential in that corner with fences obstructing views of drivers in the area. He feels commercial is the best use for the corner.

Hugo said the decision of the future land use was made last October, this is an implementation to meet the requirement under state law for consistency. If there are 2 intersecting arterials it needs to be commercial area. There are dozens of areas that need to be rezoned. Three corners at this intersection are already commercial. These are well-known planning policies around the country. He explained the reasoning for the change in the zoning. Zoning needs to follow the plan by law. Next year a Comp Plan amendment could be made. There is nothing in the plan to keep the area of Sequim Avenue and Port Williams Road the same as it is today. If there are problems with this designation, the Comp Plan needs to be changed.

Janisse asked if anyone has been recent interest in the property.

Hugo indicated recently there had been a party that had interest. It was primarily about residential, not commercial.

Andrea Gillis, Professional Real Estate, who has had the Booth property for sale for several years, stated the initial buyer is highly interested in the commercial property at that corner. She was not privy to any conversation with Hugo, but both buyers are interested in the commercial part of the property.

Hugo stated he isn't sure they were aware of what the Comp Plan indicates for that area. A Comp Plan amendment could occur next year.

Katie Gillis stated Ron Gillis indicated the buyer is interested in the commercial development of the corner. You may want to gather that information. The owner's plan hinges on the commercial corner and neighborhood center that would be an asset to the neighborhood. She would hate for the City to miss this opportunity. We want neighborhood behind the commercial center. As a developer he will not be comfortable delaying the ability to plan the corner and execute it some time in the future if the land is not zoned properly.

Nancy Booth read part of an email from Ron Gillis. The buyer will be scheduling more in-depth meetings with the City. The commercial corner is important to the development of the property. It seems like a win-win if he can get the commercial corner.

Wiseman said it seems we have a developer's plan that has not been presented to the City. This looks like something we may want to look at in the future, but the process will require a more formal presentation.

Hugo reminded the Commission you are not reviewing a proposal, it is area-wide rezoning to make it consistent with the future land map. Unless there is an error from the existing zoning map to the new zoning map, you need to have zoning consistency.

Mahalick said during the discussions of the land use map and the Comp Plan there were concerns about what could happen if we don't like it down the road. The Commission is being told they have to approve what is before them at this time, it is the way the statute is written. There is a developer that may be interested in the property but it would have to come back as a Comp Plan amendment next February to change the zoning. Council may approve the zoning map tonight.

Hugo said there needs to be discussions about the two pages of the Comp Plan as written. The map is supposed to reflect the policies. If the map is to be changed, the policies should be rewritten.

Andrea Gillis said for clarity if the Booths come back in February and ask for a revisit would it be for all of the commercial areas or just to the Booth property.

Hugo said there cannot be exceptions under law, whatever is established in our local plans, if the argument is that this intersection is two arterials, then we should look at all intersections of arterials and make them commercial. There was a zoning change sign up for 6 months in this area. The plan was adopted and the map was there - there is a way for changes to be made in February. That is why there is 2 pages of this written in the Plan. Hugo said the zoning sign was up for 6 months in the area. The facts are the facts; the Plan was adopted; there is a way to change it in February.

Motion to recommend enactment by the City Council of proposed revisions to the Official Zoning Map for the R4-8 zone classification consistent with the Single Family Residential land use presented on the FLUM of the Comprehensive Plan and policy directions of the Comprehensive Plan by Protze; second by Wiseman. Unanimously approved.

Public Meeting closed.

5. DIRECTOR'S REPORT

- a. Pending PC vacancies - activate Selection Committee

We have two vacancies on the Commission. The interview committee will be Mayor, Chair and Hugo.

6. ADJOURNMENT

Motion to adjourn by Wiseman; second by Janisse. Unanimous.

Respectfully submitted,

Roberta J. Usselman, MMC
Deputy City Clerk

Karen Mahalick
Chair

**CITY OF SEQUIM
PLANNING COMMISSION MINUTES
SEQUIM CIVIC CENTER
152 WEST CEDAR STREET
SEQUIM, WA
AUGUST 16, 2016**

1. **CALL TO ORDER, PLEDGE OF ALLEGIANCE & ROLL CALL:** PC:
Mahalick, Protze, Wiseman, Wendt, Janisse.

Commissioners present: Mahalick, Protze, Wiseman, Janisse; Wendt was excused.

2. **APPROVAL OF MINUTES: July 19, 2016**

Motion to approve minutes of July 19, 2016 meeting by Janisse; second by Wiseman. Unanimously approved.

3. **ITEMS FROM THE PUBLIC NOT ALREADY ON THE AGENDA**

4. **PUBLIC MEETING**

- a. Proposed text amendment to the Zoning Code: new SMC Chapter 18.61 Wireless Communication Facilities (WCF)

City Attorney Kristina Nelson-Gross educated the Commission on the history of the wireless moratorium and set the stage for legal boundaries of where we can spend time and energy on local regulation and those pre-empted by the FCC and Federal government. She gave a brief overview of the 1996 Telecommunications Act, which was amended to remove local barriers to broadening the availability of wireless telecommunications. Local jurisdictions have a narrow area of authority. The Spectrum Act adopted in 2012 further restricted the ability of local governments to deny modifications/collocations on existing WCFs. Local jurisdictions may only request documentation that is "reasonably related to determining whether the application meets the requirements" of the Spectrum Act. Local jurisdictions are prohibited from requiring documentation demonstrating a "need" for business case for the proposed modification. She commented on the timeframes set in the federal laws that are important to applications.

We are prohibited on regulating radio frequency (RF) emission standards if they are in compliance with the federal laws. This many times is the concern of citizens. We can require collocation which would cut down on the number of towers.

Areas in which we do have maneuverability is zoning and building inspections. We can establish preferred sites; require collocation where possible; establish height restrictions, setbacks and landscaping requirements; require proof of RF compliance for new facilities; require consideration of aesthetics, lighting, noise; require "stealth technology" i.e., camouflage, distributed antenna systems (DAS) or "small cells." A DAS is a network of separate antenna

nodes connected to a common source to provide wireless service within a geographic area. They can be indoors or outdoors and area designed to minimize clutter.

We cannot discriminate on applications as law allows sites in all zones. We can regulate the height and number of towers.

The FCC has published a documents called "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to define and promote locally-adaptable procedures that provide adequate assurance of compliance without imposing unnecessary burdens on local government or applicants.

Local governments are prohibited from banning the facilities outright. We cannot impose restrictions that amount to a ban; cannot discriminate among providers of functionally equivalent services; cannot unreasonably delay applications to place, construct or modify wireless communications facilities; cannot deny permits for new wireless communications facilities or modifications for existing facilities based on RF emissions when applicant's project meets FCC guidelines on emissions; cannot deny a permit unless that denial is based on substantial evidence set forth in a written record; and cannot fail to follow the processes set forth under federal law and the FCC Rule, including deadlines.

We have picked the Spokane ordinance to follow as it was written in 2015 and could be modeled to fit our community.

For applications for towers already in existence, the application must be approved if they do not have a substantial change by FCC rules.

There was a discussion about where cell towers are currently located in the City. There was brief discussion concerning the Brigadoon tower and other locations.

There was a discussion about exempt facilities.

Hugo provided a handout re zoning from Spokane and compared it to what Sequim is proposing.

Nelson-Gross stated if you were to recommend a certain maximum height and used the distributed antennae systems, you might have more towers than if you went up to a higher height. This will be a concept to consider when at our meeting to recommend the code changes to Council.

Mahalick asked where on the zoning map the towers would be able to be built. Hugo said it would be like the EOAs and light industry. It won't be in the Washington corridor. She'd like to see to see a map of where the towers could be located for visual impact.

Nelson-Gross stated the Brigadoon tower had to be high enough to not interfere with other signals. If we are going to allow co-location, we need to be sure the height of the original tower is appropriate. This will be a policy decision.

Protze commented that towers are usually put on the highest point in the area and maybe not in the City.

Hugo said he will research what DAS looks like in reality. It seems they are more adaptable than stealth design.

Public Meeting closed at 6:55 pm.

5. NEW BUSINESS

6. UNFINISHED BUSINESS

a. Zoning code update: Council meeting of August 8 and next steps

Hugo gave a brief history of the property at Sequim Avenue and Port Williams Road; it was once approved as the Sorrento project. Council did not pass the zoning code update at its meeting on August 8.

There will be a Special Meeting on September 6 for Council with an educational program for zoning practices. The Planning Commission is invited to attend the Council session and then we will have the Planning Commission meeting.

7. DIRECTOR'S REPORT

a. Pending fill of PC vacancies: Appointments at Council meeting 9/12 at earliest

We have received at least two applications for the vacancies on the Commission. The selection committee is the Mayor, the Commission chair and Hugo. The applicants will be interviewed and hopefully appointed at the September 12 meeting.

8. GOOD OF THE ORDER

9. ADJOURNMENT

Motion to adjourn by Protze; second by Wiseman. Unanimous.

Respectfully submitted,

Roberta J. Usselman, MMC
Deputy City Clerk

Karen Mahalick
Chair

SEQUIM PLANNING COMMISSION AGENDA COVER SHEET

MEETING DATE: September 6, 2016

FROM: Ann Soule, Public Works Resource Manager

acs
Initials

SUBJECT/ISSUE: Code Updates Relevant to Adopted Stormwater Plan

Discussion dates	March 1, 2016 Final Plan Approval			
CATEGORY				Time Needed for Presentation
<input type="checkbox"/> Public Meeting <input checked="" type="checkbox"/> Unfinished Business <input type="checkbox"/> New Business				20 minutes
Reviewed by			Initials	Date
Chris Hugo, Director – DCD			CRH	09012016
David Garlington, Director – PW				
Matt Klontz – City Engineer				
Kristina Nelson-Gross – City Attorney				

PROBLEM / ISSUE STATEMENT:

The City’s first stormwater plan was adopted after a public hearing in April of this year. The two-year planning process brought to staff’s attention several sections in our municipal code that are conflicting, confusing, out of date, or inconsistently applied and in need of clarification. As the code was analyzed it was found that clarifications made in one place could render subsections elsewhere unnecessary, allowing the SMC to be streamlined—whether or not the impetus was coming from the adopted plan.

The majority of suggested changes related to stormwater management are included in the attachments, to get the review process started. Note that Enforcement and Exceptions subsections were removed from these drafts, pending final review of extensive updates proposed at the request of staff and City Attorney.

LIST OF ATTACHMENTS:

1. Mark-up versions of SMC 13.40, 13.64, 13.104 and 13.108
2. Mark-up of SMC Titles 8 and 18

DISCUSSION/ANALYSIS: Staff worked with our stormwater grant consultant, Herrera, to identify specific language that needed to be addressed throughout the SMC; these sections are provided here in mark-up format for review and discussion.

The first item of note regards clarification of exactly which state stormwater manual is to be utilized. For more than two decades, SMC 13.104.100 “adopts by reference” the “latest edition of Ecology’s Stormwater Management Manual for Western Washington.” City staff has interpreted that to mean the 2012 manual since 2012, and subsequently including 2014 amendments. However, there are subsections of the SMC that quote requirements from the 1992 edition (13.104.130 through .320), and Title 18 specifies the 2005 manual, putting the code in conflict with itself.

Clearly, the code needs to be internally consistent and would be stronger if a specific manual were named. To consider whether the “latest edition” (2012 with 2014 amendments) is the best choice for the City, staff from Public Works and DCD, consulted with Herrera and determined it was. We agreed that the manual should be named in one section of code, SMC 13.104.100, with all other references in the SMC pointing to that section. You will see these updates in the attachments.

Another element causing concern is the prescriptive and inflexible nature of the enforcement sections in 13.104 and 13.108. Staff believes that the City should have a variety of options available when enforcing the code to reflect the varying circumstances in which enforcement might be required. Clarifications and additional tools in the enforcement and exceptions subsections are in final review, so these subsections have been omitted from the draft code attached to avoid confusion.

FINANCIAL IMPLICATIONS:

Closer attention to requirements in the SMC, such as complete implementation of the state stormwater manual, has potential to involve more staff time in development application support and review than is currently expended—initially, at least. Resources available for a short time through our Centennial Clean Water grant are being used to produce guidance materials to assist staff as well as applicants. Eventually, typical applications are expected to come in with more complete information and appropriate proposals. Amended enforcement procedures should facilitate staff effort related to compliance.

STAFF RECOMMENDATION:

Staff requests that the Planning Commission announce a Public Meeting to receive input on proposed code changes at its next regularly-scheduled meeting on September 20, 2016.

MOTION:

I move to hold a Public Meeting to receive input on changes to the Sequim Municipal Code proposed to align code with the recently-adopted Storm & Surface Water Plan and to improve internal operations and enforcement.

Chapter 13.40

SEWER CONNECTION REQUIRED

Sections:

- 13.40.010 Connection required.
- 13.40.020 Notice of requirement to connect.
- 13.40.030 Extension of time to connect.

13.40.010 Connection required.

A. Except as otherwise provided in SMC 13.40.030 and 13.102.040, the owner or occupant of any lands, premises or habitable structures shall connect ~~such lands and all buildings, habitable structures, ditches, watercourses and~~ plumbing outlets located thereon with the nearest accessible sanitary sewer, ~~combined sewer system or storm drain~~, whenever such a sewer ~~or drain~~ is located within 200 feet of the closest point of the building site or premises to be served, as measured along any public place or any easement granted for sewer purposes. The city engineer shall determine when the sanitary sewer, ~~combined sewer or storm drain~~ is accessible. This requirement shall be based upon the following conditions:

1. Sanitary plumbing outlets must be connected to ~~a combined or~~ sanitary sewers **system**.
2. ~~Residences, multiple residences, churches, schools, hotels, motels, industrial and commercial buildings, planned developments, hospitals and all similar installations and appurtenances thereto; storm plumbing outlets, downspouts, parking lot drainage, footing drains, and unpolluted water must be connected to any storm drain existing on the same side of the centerline of the abutting street and within 60 feet of a side property line. In the event a natural outlet is available abutting the property, it may be used for stormwater disposal. In the event neither of the two above outlets are available, stormwater may be disposed of in dry wells or by draining the water to the street gutter, but stormwater shall not be directed over the surface of a public sidewalk or walkway.~~ **Storm drainage must be managed according to SMC 13.104 and must not enter the sanitary sewer system.**
3. ~~Residences, multiple residences, churches, schools, hotels, motels, industrial and commercial buildings, planned developments, hospitals and all similar installations or appurtenances thereto which are being connected to a combined sewer when there is no accessible storm drain: downspouts, storm plumbing outlets, parking lot drainage, unpolluted water and footing drains must be carried in a side sewer pipe separate from the sanitary side sewer pipe to the property line, as designated by the city engineer, and shall be joined with the sanitary side sewer at that point and then connected to the combined sewer; provided, that the city engineer may permit or require storm drainage to discharge upon the surface of a public place or into a natural outlet or dry wells, even though a combined sewer is accessible, when it is planned to provide a storm relief sewer in the vicinity of said combined sewer. The storm side sewer pipe shall be laid as shallow as possible with no more than a four foot depth beneath the curb elevation, whenever possible. Footing drains are designated as stormwater drains and shall not be connected to a sanitary sewer.~~

B. The city engineer may prescribe the manner in which connections shall be made, and require plans to be submitted for his or her approval prior to the issuance of a permit or the installation of any pipe. (Ord. 2001-015 § 1; Ord. 270 § 3, 1973)

Chapter 13.64

STORM DRAINAGE(Reserved)

Sections:

~~13.64.010—Drainage required.~~

13.64.010 Drainage required.

~~Hard surfaced or graded areas such as parking lots, service station yards and storage yards shall be drained in such a manner as will protect adjacent public and private property from damage and such drainage shall enter the public sewer system or other outlet approved by the city engineer and as required by SMC 13.40.010. Such storm drainage shall not be connected to enter a sanitary sewer. (Ord. 270 § 21, 1973)~~

Division V. Stormwater Management

Chapter 13.104 STORMWATER MANAGEMENT

Sections:

Article I. Findings of Fact, Need and Purpose

13.104.010 Findings of fact.

13.104.020 Need.

13.104.030 Purpose.

Article II. Definitions

13.104.040 Application.

Article III. General Provisions

13.104.050 Abrogation and greater restrictions.

13.104.060 Interpretation.

Article IV. Applicability

13.104.070 Conflict.

Article V. Regulated Activities and Allowed Activities

13.104.080 Regulated activities.

13.104.090 Exemptions.

Article VI. General Requirements

13.104.100 Stormwater management manual adopted.

13.104.110 Stormwater best management practices (BMPs).

13.104.120 Illicit discharges.

Article VII. Approval Standards

~~13.104.130 Small parcel minimum requirements.~~

~~13.104.140 Small parcel requirement #1—Construction access route.~~

~~13.104.150 Small parcel requirement #2—Stabilization of denuded areas.~~

~~13.104.160 Small parcel requirement #3—Protection of adjacent properties.~~

~~13.104.170 Small parcel requirement #4—Maintenance.~~

~~13.104.180 Small parcel requirement #5—Other BMPs.~~

~~13.104.190 Large development minimum requirements.~~

~~13.104.200 New development.~~

~~13.104.210 Redevelopment.~~

~~13.104.220 Minimum requirement #1—Erosion and sediment control.~~

~~13.104.230 Minimum requirement #2—Preservation of natural drainage systems.~~

~~13.104.240 Minimum requirement #3—Source control of pollution.~~

~~13.104.250 Minimum requirement #4—Runoff treatment BMPs.~~

~~13.104.260 Minimum requirement #5—Streambank erosion control.~~

~~13.104.270 Minimum requirement #6—Wetlands.~~

~~13.104.280 Minimum requirement #7—Water quality sensitive areas.~~

~~13.104.290 Minimum requirement #8—Off-site analysis and mitigation.~~

~~13.104.300 Minimum requirement #9—Basin planning.~~

~~13.104.310 Minimum requirement #10—Operation and maintenance.~~

~~13.104.320 Minimum requirement #11—Financial liability.~~

~~13.104.330 Exceptions.~~

Article VIII. Administration

13.104.340 Director.
13.104.350 Review and approval.
13.104.360 Enforcement authority.
13.104.370 Inspection.

Article IX. Enforcement

13.104.380 General.
13.104.390 Stop work order.
13.104.400 Civil penalty.
13.104.410 Penalties due.
13.104.420 Penalties recovered.

Article X. Exceptions

13.104.430 City council.
13.104.440 Findings of fact.
13.104.450 Prior approval.
13.104.460 Duration of exception.
13.104.470 Right of appeal.^[AS4]

Article I. Findings of Fact, Need and Purpose

13.104.010 Findings of fact.

The city council of the city hereby finds that:

A. Stormwater pollution is a problem associated with land utilization and development and the common occurrence of potential pollutants, ~~particularly such as~~ **sediment, metals**, pesticides, fertilizers, petroleum products, **and** pet wastes ~~and numerous others~~.

Land utilization and development is also known to increase both the volume and duration of peak flows. The resulting erosion, scouring, and deposition of sediment affect the ecological balance in the stream **or other receiving water body**.

Sedimentation and stormwater pollution cause diversity of species to decrease and allows ~~more~~ **more tolerant (and usually less desirable)** species to remain.

Stormwater pollution can cause or contribute to closures of shellfish beds and swimming beaches and other restrictions on public use of the waters within the city.

B. An expanding population and increased development of land have led to:

Water quality degradation through **pollutants carried by stormwater including sediments, discharge of nutrients, metals, oils and grease, and other contaminants** ~~toxic materials, and other detrimental substances including, without limitation, insect and weed control compounds;~~

~~Drainage and storm and surface water runoff problems~~ **Localized flooding or ponding and erosion, causing street and other property damage** within the city; and

~~Public~~ **Safety hazards and nuisances** ~~to both lives and property~~ posed by uncontrolled water runoff on streets and highways.

~~Continuation of present stormwater management practices, to the extent that they exist, will lead to water quality degradation, erosion, property damage, and endanger the health and safety of the inhabitants of the city.~~ **Stormwater is an important source of water which can be reused if controlled and managed effectively.**

~~In the future such problems and dangers will be reduced or avoided if existing properties and future developers, both private and public, provide for stormwater quality and quantity~~

~~controls~~The City's stormwater program should ~~strive to~~ follow the goals and implement the activities outlined in the Storm and Surface Water Master Plan adopted by Resolution R2016-09.

~~E. Stormwater quality and quantity controls can be achieved when land is developed or redeveloped by implementing appropriate best management practices (BMPs).~~

~~F. Best management practices can be expected to perform as intended only when properly designed, constructed and maintained. (Ord. 95-003 § 1.1)~~

13.104.020 Need.

The city council finds that this chapter is necessary in order to:

A. ~~Minimize or eliminate water quality degradation~~Reduce localized flooding or ponding causing street and other property damage.

B. ~~Prevent erosion and sedimentation in creeks, streams, ponds, lakes and other water bodies~~Reduce the level of pollutants carried by stormwater including sediments, nutrients, metals, oils, and other contaminants.

C. Protect property owners adjacent to existing and developing lands from increased runoff rates which could cause erosion of abutting property.

D. Preserve and enhance fish and wildlife habitat and the suitability of waters for contact recreation, fishing, and other beneficial uses.

E. Preserve and enhance the aesthetic quality of the water.

F. Promote sound development policies which respect and preserve city surface water, ground water, drinking water supply and all water resources, and which provide resilience from drought and sediment.

G. Ensure the safety of the city roads and rights-of-way.

H. Decrease stormwater-related damage to public and private property from existing and future runoff.

I. To protect the health, safety and welfare of the inhabitants of the city. (Ord. 95-003 § 1.2)

13.104.030 Purpose.

The provisions of this chapter are intended to guide and advise all who conduct new development or redevelopment within the city. The provisions of this chapter establish the minimum level of compliance which must be met to permit a property to be developed or redeveloped within the city.

It is the purpose of this chapter to:

A. Minimize water quality degradation and sedimentation in streams, ponds, lakes, wetlands and other water bodies;

B. Minimize the impact of increased runoff, erosion and sedimentation caused by land development and maintenance practices;

C. Maintain and protect ground water resources;

D. Minimize adverse impacts of alterations on ground and surface water quantities, locations and flow patterns;

E. Decrease potential landslide, flood and erosion damage to public and private property;

F. Promote site planning principles and construction practices that retain native vegetation and minimize impervious surfaces and are consistent with natural topography and hydrologic conditions to the extent feasible ~~are consistent with natural topographical, vegetational and hydrological conditions;~~

G. Maintain and protect the city stormwater management infrastructure and those downstream;

H. Provide a means of ~~r~~Regulating clearing and grading of private and public land while minimizing water quality impacts in order to protect public health and safety and water quality; and

I. Provide minimum requirements and best management practices for new development and redevelopment to control the quantity and quality of stormwater runoff to comply with water quality standards and contribute to the protection of beneficial uses of the city's ground and surface water resources regulations and construction procedures which will preserve, replace or enhance, to the maximum extent practicable, existing vegetation to preserve and enhance the natural qualities of lands, wetlands and water bodies. (Ord. 95-003 § 1.3)

Article II. Definitions

13.104.040 Application.

For the purposes of this chapter, the following definitions shall apply:

~~1. "American Public Works Association" or "APWA" means the adopted edition of the Washington State Chapter of the American Public Works Association.~~

12. "Approval" means the proposed work or completed work conforms to this chapter in the opinion of the administrator~~[AS9]~~.

~~3. "As graded" means the extent of surface conditions on completion of grading.~~

~~4. "Basin plan" means a plan and all implementing regulations and procedures including but not limited to land use management adopted by ordinance for managing surface and stormwater management facilities and features within individual subbasins.~~

~~5. "Bedrock" means the more or less solid rock in place either on or beneath the surface of the earth. It may be soft, medium, or hard and have a smooth or irregular surface.~~

~~6. "Bench" means a relatively level step excavated into earth material on which fill is to be placed.~~

27. "Best management practice" or "BMP" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water. BMPs are listed and described in the manual.

~~8. "Civil engineer" means a professional engineer licensed in the state of Washington who is experienced and knowledgeable in the practice of soils engineering.~~

~~9. "Civil engineering" means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind.~~

~~103. "Clearing" means the destruction and removal of vegetation by manual, mechanical, or chemical methods.~~

~~114. "Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale and retail trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.~~

~~12. "Compaction" means densification of a fill by mechanical means.~~

~~13. "Critical areas" means, at a minimum, areas which include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas,~~

frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.

14. "Design storm" means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm of interest or concern for the purposes of analyzing existing drainage, designing new drainage facilities or assessing other impacts of a proposed project on the flow of surface water. (A hyetograph is a graph of percentages of total precipitation for a series of time steps representing the total time during which the precipitation occurs.)

15. "Detention" means the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system, the difference being held in temporary storage.

16. "Detention facility" means an above or below ground facility, such as a pond or tank, that temporarily stores stormwater runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored stormwater.

17. "Drainage basin" means a geographic and hydrologic subunit of a watershed.

18. "Earth material" means any rock, natural soil or fill and/or any combination thereof.

19. "Ecology" means the Washington State Department of Ecology.

20. "Engineering geologist" means a geologist experienced and knowledgeable in engineering geology.

21. "Engineering geology" means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

22. "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

23. "Excavation" means the mechanical removal of earth material.

24. "Existing site conditions" means:

a. For developed sites with stormwater facilities that have been constructed to meet the standards in the minimum requirements of this manual, existing site conditions shall mean the existing conditions on the site.

b. For developed sites that do not have stormwater facilities that meet the minimum requirements, existing site conditions shall mean the conditions that existed prior to the city adoption of a stormwater management program. If in question, the existing site conditions shall be documented by aerial photograph records, or other appropriate means.

c. For all sites in water quality sensitive areas as identified under Minimum Requirement #7, Water Quality Sensitive Areas, existing site conditions shall mean undisturbed forest, for the purpose of calculating runoff characteristics.

d. For all undeveloped sites outside of water quality sensitive areas, existing site conditions shall mean the existing conditions on the site.

e. For undeveloped sites or redevelopment of existing sites that have a city approved development plan or have submitted a complete application for a regulated activity prior to the city adoption of this stormwater management plan shall mean the conditions that existed prior to the city adoption of this stormwater management plan, as amended by the approved development plan; or shall mean the conditions that existed as amended by the approved regulated activity for an application being processed by the city prior to the city adoption of this stormwater management plan. This status for an existing site condition shall be valid for the lesser of the permit duration or two years from the approval date, except subdivisions which shall be three years from the approval date.

~~25~~10. “Experimental BMP” means a BMP that has not been tested and evaluated by the Department of Ecology in collaboration with local governments and technical experts.

2611. “Fill” means a deposit of earth material placed by artificial means.

2712. “Forest practice” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- a. Road and trail construction.
- b. Harvesting, final and intermediate.
- c. Precommercial thinning.
- d. Reforestation.
- e. Fertilization.
- f. Prevention and suppression of diseases and insects.
- g. Salvage of trees.
- h. Brush control.

~~28. “Frequently flooded areas” means the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.~~

~~29. “Geologically hazardous areas” means areas that because of their susceptibility to erosion, sliding, earthquake or other geological events, are not suited to the siting of commercial, residential or industrial development consistent with public health or safety concerns.~~

~~30. “Grade” means the slope of a road, channel, or natural ground. The finished surface of a canal bed, roadbed, top of embankment, or bottom of excavation; any surface prepared for the support of construction such as paving or the laying of a conduit.~~

- ~~a. Existing Grade. The grade prior to grading.~~
- ~~b. Rough Grade. The stage at which the grade approximately conforms to the approved plan.~~
- ~~c. Finish Grade. The final grade of the site which conforms to the approved plan.~~

~~31. “Gradient terrace” means an earth embankment or a ridge and channel constructed with suitable spacing and an acceptable grade to reduce erosion damage by intercepting surface runoff and conducting it to a stable outlet at a stable nonerosive velocity.~~

~~32. (To) “Grade” means to finish the surface of a canal bed, roadbed, top of embankment or bottom of excavation.~~

~~33~~13. “Ground water” means water in a saturated zone or stratum beneath the surface of land or a surface water body.

~~34. “Hydroperiod” means the seasonal occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation.~~

3514. “[Impervious][AS10] surface” means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces.

3615. “Illicit discharge” means all nonstormwater discharges to stormwater drainage systems that cause or contribute to a violation of state water quality, sediment quality or ground water quality standards, [including][AS11] but not limited to sanitary sewer connections, industrial process water, interior floor drains, car washing and greywater systems.

3716. "Interflow" means that portion of rainfall that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface, for example in a wetland, spring or seep.

3817. "Land disturbing activity" means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include but are not limited to demolition, construction, clearing, grading, filling and excavation.

39. ~~"Large parcel erosion and sediment control plan" or "large parcel ESC plan" means a plan to implement BMPs to control pollution generated during land disturbing activity. Guidance for preparing a large parcel ESC plan is contained in the manual.~~

4018. "Mitigation" means, in the following order of preference:

- a. Avoiding the impact altogether by not taking a certain action or part of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- c. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- e. Compensation for the impact by replacing, enhancing, or providing substitute resources or environments.

41. ~~"Natural location" means the location of those channels, swales, and other nonmanmade conveyance systems as defined by the first documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate.~~

4219. "New development" means the following activities: land disturbing activities, structural development, including construction, installation or expansion of a building or other structure; creation of impervious surfaces; Class IV – general forest practices that are conversions from timber land to other uses; and subdivision and short subdivision of land as defined in RCW 58.17.020. All other forest practices and commercial agriculture are not considered new development.

4320. "Permanent ~~S~~stormwater ~~quality-C~~ontrol ~~Plan~~ (PSQC~~PSCP~~) plan" means a plan which includes permanent BMPs for the control of runoff and pollution from stormwater runoff after construction and/or land disturbing activity has been completed. ~~For small sites, this requirement is met by implementing a small parcel erosion and sediment control plan. Guidance on preparing a PSQC plan is contained in the manual.~~

4421. "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

4522. "Pollution" means contamination or other alteration of the physical, chemical, or biological properties, of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

4623. "Redevelopment" means, on an already developed site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a

routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.

47. “Regional retention/detention system” means a stormwater quantity control structure designed to correct existing excess surface water runoff problems of a basin or subbasin. The area downstream has been previously identified as having existing or predicted significant and regional flooding and/or erosion problems. This term is also used when a detention facility is used to detain stormwater runoff from a number of different businesses, developments or areas within a catchment.

48. “Retention/detention facility (R/D)” means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground; or to hold surface and stormwater runoff for a short period of time and then release it to the surface and stormwater management system.

49~~24~~. “Site” means the portion of a piece of property which is directly subject to development.

50. “Slope” means the degree of deviation of a surface from the horizontal; measured as a numerical ratio, percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second is the vertical distance (rise), as 2:1. A 2:1 slope is a 50 percent slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90° slope being vertical (maximum) and 45° being a 1:1 or 100 percent slope.

51. “Small parcel erosion and sediment control plan” or “small parcel ESC plan” means a plan for small sites to implement temporary BMPs to control pollution generated during the construction phase only, primarily erosion and sediment. Guidance for preparing a small parcel ESC plan is contained in the manual.

52~~25~~. “Soil” means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

53. “Source control BMP” means a BMP that is intended to prevent pollutants from entering stormwater. A few examples of source control BMPs are erosion control practices, maintenance of stormwater facilities, constructing roofs over storage and working areas, and directing wash water and similar discharges to the sanitary sewer or a dead end sump.

54~~26~~. “Stormwater” means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.

55~~27~~. “Stormwater drainage system” means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter stormwater.

56~~28~~. “Stormwater facility” means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catchbasins, oil/water separators, permeable pavement sediment basins and bioretention systems modular pavement.

57~~29~~. “Stormwater Management Manual” or “manual” means the stormwater design, management, and maintenance guidance manual Stormwater Management Manual for the Puget Sound Basin, adopted by reference and prepared by Ecology and named in SMC 13.104.100, that contains BMPs to prevent or reduce pollution.

58~~30~~. “Stormwater site plan” means the comprehensive report containing all of the technical information and analysis necessary for regulatory agencies to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements. Contents of the Stormwater Site Plan will vary with the type and size of the project, and individual site

characteristics. It ~~a plan which includes an~~ **Construction Stormwater Pollution Prevention Plan (Construction SWPPP)** ~~erosion and sediment control (ESC) plan and/or a P~~ **permanent S** ~~stormwater quality C~~ **control P** ~~plan (PSCPPSQC)~~. For small sites, this plan is the equivalent of a small parcel erosion and sediment control plan. Guidance on preparing a stormwater site plan is contained in the manual.

59. ~~“Toe of slope” means a point or line of slope in an excavation or cut where the lower surface changes to horizontal or meets the exiting ground slope.~~

60. ~~“Top of slope” means a point or line on the upper surface of a slope where it changes to horizontal or meets the original surface.~~

61. ~~“Treatment BMP” means a BMP that is intended to remove pollutants from stormwater. A few examples of treatment BMPs are detention ponds, oil/water separators, biofiltration swales and constructed wetlands.~~

62. ~~“Unstable slopes” means those sloping areas of land which have in the past exhibited, are currently exhibiting, or will likely in the future exhibit, mass movement of earth.~~

63. ~~31. “Water body” means surface waters including rivers, streams, lakes, marine waters, estuaries, and wetlands,~~ **or sub-surface waters such as aquifers and other ground waters.**

64. ~~“Watershed” means a geographic region within which water drains into a particular river, stream, or body of water as identified and numbered by the State of Washington Water Resource Inventory Areas (WRIAs) as defined in Chapter 173-500 WAC.~~

65. ~~32. “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. This includes wetlands created, restored or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from sites that are not wetlands: irrigation and drainage ditches, grass-lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.~~

66. ~~33. “Vegetation” means all organic plant life growing on the surface of the earth. (Ord. 95-003 § 2)~~

Article III. General Provisions

13.104.050 Abrogation and greater restrictions.

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 95-003 § 3.1) Where the Stormwater Manual specified in SMC 13.104.100 is more restrictive than provisions of SMC Chapter 13.104, the Stormwater Manual shall control. This Chapter requires compliance with all applicable provisions of the Stormwater Manual specified in SMC 13.104.100.

13.104.060 Interpretation.

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 95-003 § 3.2)

13.104.065 No Liability.

A. Administration of this chapter shall not be construed to impose or create a basis for any liability on the part of the county, its appointed and elected officials, officers, agents, or employees, nor shall this chapter be construed to create any special relationship with or otherwise protect any specific person or class of persons.

B. The City of Sequim is not responsible for the accuracy of plans (preliminary or final) submitted for approval. The county expressly disclaims any responsibility for design or implementation of a drainage plan. The design and implementation of a drainage plan is the responsibility of the person or firm submitting the application.

Article IV. Applicability

13.104.070 Conflict.

When any provision of any other ordinance of the city conflicts with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter. The public works director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. Prior to fulfilling the requirements of this chapter, the city shall not grant any approval or permission to conduct a regulated activity including but not limited to the following:

Building permit, commercial or residential; conditional use permit; franchise right-of-way construction permit; grading and clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; unclassified use permit; variance; zone reclassification; subdivision; short subdivision; special use permit; utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

Regulated activities shall be conducted only after the public works director approves a stormwater site plan which includes one or more of the following as required by this chapter:

A. ~~Small parcel erosion and sediment control plan~~ **Construction Stormwater Pollution Prevention Plan (SWPPP);**

B. ~~Large parcel erosion and sediment control plan;~~

~~BC. Permanent s~~ **Stormwater quality-Ceontrol Plan (PSCPPSQE) plan.** (Ord. 95-003 § 4)

Article V. Regulated Activities and Allowed Activities

13.104.080 Regulated activities.

Consistent with the minimum requirements contained in this chapter, the public works director shall approve or disapprove the following activities, unless exempted in SMC 13.104.090 below:

A. New Development.

1. Land disturbing activities;
2. Structural development, including construction; installation or expansion of a building or other structure;
3. Creation of impervious surfaces;
4. Class IV general forest practices that are conversions from timber land to other uses;
5. Subdivision, short subdivision and binding site plans, as defined in RCW 58.17.020.

B. Redevelopment.

1. On an already developed site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, land disturbing activity, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment. (Ord. 95-003 § 5.1)

13.104.090 Exemptions.

All new development and redevelopment is subject to the minimum requirements of this chapter, except the following activities, which are exempt:

A. Commercial agriculture, and forest practices regulated under Title 222 WAC, except for Class IV general forest practices that are conversions from timber land to other uses.

B. Development undertaken by the Washington State Department of Transportation in state highway rights-of-way regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program.

C. Completion of existing one-half developed streets to city standards are excepted from Minimum Requirement #4 only [AS19]. (Ord. 95-003 § 5.2)

Article VI. General Requirements

13.104.100 Stormwater management manual adopted.

The latest 2012 (as amended in 2014) edition of Ecology's Stormwater Management Manual for Western Washington is hereby adopted by reference and is hereinafter referred to as the manual. (Ord. 95-003 § 6.1)

13.104.110 Stormwater best management practices (BMPs).

General: BMPs shall be used to control runoff and pollution from stormwater. BMPs shall be used to comply with the standards in this chapter. BMPs are in the manual.

Experimental BMPs: In those instances where appropriate BMPs are not in the manual, experimental BMPs should be considered. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the manual in an effort to improve stormwater quality-management technology. Experimental BMPs must be approved in accordance with the approval process outlined in the manual. (Ord. 95-003 § 6.2)

13.104.120 Illicit discharges.

Illicit discharges to stormwater drainage systems are prohibited. (Ord. 95-003 § 6.3)

Article VII. Approval Standards

For specific details, refer to manual named in SMC 13.104.100.

~~13.104.130 Small parcel minimum requirements.~~

~~The following new development shall be required to control erosion and sediment during construction, to permanently stabilize soil exposed during construction, to comply with Small Parcel Requirements 1 through 5 (SMC 13.104.140 through 13.104.180) below:~~

~~A. Individual, detached, single family residences and duplexes.~~

B. Creation or addition of less than 5,000 square feet of impervious surface area.

C. Land-disturbing activities of less than one acre.

Compliance shall be demonstrated through the implementation of an approved small parcel erosion and sediment control plan. (Ord. 95-003 § 7.1)

13.104.140 Small parcel requirement #1—Construction access route.

Construction vehicle access shall be, whenever possible, limited to one route. Access points shall be stabilized with quarry spell or crushed rock to minimize the tracking of sediment onto public roads. (Ord. 95-003 § 7.1.1)

13.104.150 Small parcel requirement #2—Stabilization of denuded areas.

Soil Stabilization. All exposed soils shall be stabilized by suitable application of BMPs, including but not limited to sod or other vegetation, plastic covering, mulching, or application of ground base on areas to be paved. All BMPs shall be selected, designed and maintained in accordance with an approved manual. From October 15th through March 31st, no soils shall remain exposed for more than two days. From April 1st through October 14th, no soils shall remain exposed for more than seven days. (Ord. 95-003 § 7.1.2)

13.104.160 Small parcel requirement #3—Protection of adjacent properties.

Adjacent properties shall be protected from sediment deposition by appropriate use of vegetative buffer strips, sediment barriers or filters, dikes or mulching, or by a combination of these measures and other appropriate BMPs. (Ord. 95-003 § 7.1.3)

13.104.170 Small parcel requirement #4—Maintenance.

All erosion and sediment control BMPs shall be regularly inspected and maintained to ensure continued performance of their intended function. (Ord. 95-003 § 7.1.4)

13.104.180 Small parcel requirement #5—Other BMPs.

As required by the local plan approval authority, other appropriate BMPs to mitigate the effects of increased runoff shall be applied. (Ord. 95-003 § 7.1.5)

13.104.190 Large development minimum requirements.

13.104.200 New development.

A. All new development that includes the creation or addition of 5,000 square feet, or greater, of new impervious surface area, and/or land disturbing activity of one acre or greater, shall comply with Minimum Requirements #1 through #11 in SMC 13.104.220 through 13.104.320.

Compliance shall be demonstrated through the implementation of an approved stormwater site plan consisting of a large parcel ESC plan and a PSQC plan, as appropriate.

B. All new development that includes the creation or addition of 5,000 square feet, or greater, of new impervious surface area, and land disturbing activity of less than one acre, shall comply with Minimum Requirements #2 through #11 in SMC 13.104.230 through 13.104.320 and the small parcel minimum requirements found in SMC 13.104.130 through 13.104.180 above.

Compliance shall be demonstrated through the implementation of an approved stormwater site plan that includes a small parcel erosion and sediment control plan and a PSQC plan.

This section does not apply to the construction of individual, detached, single-family residences and duplexes. Those types of new development are included in the small parcel minimum requirements. (Ord. 95-003 § 7.2.1)

13.104.210 Redevelopment.

A. Where redevelopment of $\geq 5,000$ square feet occurs:

New development Minimum Requirements #1 through #11 in SMC 13.104.220 through 13.104.320, shall apply to that portion of the site that is being redeveloped, and source control BMPs shall be applied to the entire site, including adjoining parcels if they are part of the project.

B. In addition to the above requirements, where one or more of the following conditions apply, a stormwater management plan shall be prepared that includes a schedule for implementing the minimum requirements to the maximum extent practicable, for the entire site, including adjoining parcels if they are part of the project. An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop redevelopment requirements that are tailored to a specific basin.

1. Existing sites greater than one acre in size with 50 percent or more impervious surface.

2. Sites that discharge to a receiving water that has a documented water quality problem. Subject to local priorities, a documented water quality problem includes but is not limited to water bodies:

a. Listed in reports required under Section 305(b) of the Clean Water Act, and designated as not supporting beneficial uses;

b. Listed under Section 304(I)(1)(A)(i), 304(I)(1)(A)(ii), or 304(I)(1)(B) of the Clean Water Act as not expected to meet water quality standards or water quality goals;

c. Listed in Washington State's Nonpoint Source Assessment required under Section 319(a) of the Clean Water Act that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards.

3. Sites where the need for additional stormwater control measures have been identified through a basin plan, the watershed ranking process under Chapter 400-12 WAC, or through Growth Management Act planning. (Ord. 95-003 § 7.2.2)

13.104.220 Minimum requirement #1 — Erosion and sediment control.

All new development and redevelopment that includes land disturbing activities of \geq one acre shall comply with Erosion and Sediment Control Requirements #1 through #14, below.

Compliance with the Erosion and Sediment Control Requirements shall be demonstrated through implementation of an approved large parcel erosion and sediment control plan.

The following erosion and sediment control requirements shall be met:

A. Erosion and Sediment Control Requirement #1: Stabilization and Sediment Trapping. All exposed and unworked soils shall be stabilized by suitable application of BMPs. From October 15th to March 31st, no soils shall remain unstabilized for more than two days. From April 1st to October 14th, no soils shall remain unstabilized for more than seven days. Prior to leaving the site, stormwater runoff shall pass through a sediment pond or sediment trap, or other appropriate BMPs.

B. Erosion and Sediment Control Requirement #2: Delineate Clearing and Easement Limits. In the field, mark clearing limits and/or any easements, setbacks, sensitive/critical areas and their buffers, trees and drainage courses.

C. Erosion and Sediment Control Requirement #3: Protection of Adjacent Properties. Properties adjacent to the project site shall be protected from sediment deposition.

D. Erosion and Sediment Control Requirement #4: Timing and Stabilization of Sediment Trapping Measures. Sediment ponds and traps, perimeter dikes, sediment barriers, and other BMPs intended to trap sediment on-site shall be constructed as a first step in grading.

These BMPs shall be functional before land disturbing activities take place. Earthen structures such as dams, dikes, and diversions shall be seeded and mulched according to the timing indicated in Erosion and Sediment Control Requirement #1.

E. Erosion and Sediment Control Requirement #5: Cut and Fill Slopes. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. In addition, slopes shall be stabilized in accordance with Erosion and Sediment Control Requirement #1.

F. Erosion and Sediment Control Requirement #6: Controlling Off-Site Erosion. Properties and waterways downstream from development sites shall be protected from erosion due to increases in the volume, velocity, and peak flow rate of stormwater runoff from the project site.

G. Erosion and Sediment Control Requirement #7: Stabilization of Temporary Conveyance Channels and Outlets. All temporary on-site conveyance channels shall be designed, constructed and stabilized to prevent erosion from the expected velocity of flow from a two-year, 24-hour frequency storm for the developed condition. Stabilization adequate to prevent erosion of outlets, adjacent streambanks, slopes and downstream reaches shall be provided at the outlets of all conveyance systems.

H. Erosion and Sediment Control Requirement #8: Storm Drain Inlet Protection. All storm drain inlets made operable during construction shall be protected so that stormwater runoff shall not enter the conveyance system without first being filtered or otherwise treated to remove sediment.

I. Erosion and Sediment Control Requirement #9: Underground Utility Construction. The construction of underground utility lines shall be subject to the following criteria:

1. Where feasible, no more than 500 feet of trench shall be opened at one time.

2. Where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches.

3. Trench dewatering devices shall discharge into a sediment trap or sediment pond.

J. Erosion and Sediment Control Requirement #10: Construction Access Routes. Wherever construction vehicle access routes intersect paved roads, provisions must be made to minimize the transport of sediment (mud) onto the paved road. If sediment is transported onto a road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling or sweeping and be transported to a controlled sediment disposal area. Street washing shall be allowed only after sediment is removed in this manner.

K. Erosion and Sediment Control Requirement #11: Removal of Temporary BMPs. All temporary erosion and sediment control BMPs shall be removed within 30 days after final site stabilization is achieved or after the temporary BMPs are no longer needed. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal shall be permanently stabilized.

L. Erosion and Sediment Control Requirement #12: Dewatering Construction Sites. Dewatering devices shall discharge into a sediment trap or sediment pond.

M. Erosion and Sediment Control Requirement #13: Control of Pollutants Other Than Sediment on Construction Site. All pollutants other than sediment that occur on-site during construction shall be handled and disposed of in a manner that does not cause contamination of stormwater.

N. Erosion and Sediment Control Requirement #14: Maintenance. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All maintenance and repair shall be conducted in accordance with an approved manual.

O. Erosion and Sediment Control Requirement #15: Financial Liability. Performance bonding, or other appropriate financial instruments, shall be required for all projects to ensure compliance with the approved erosion and sediment control plan. (Ord. 95-003 § 7.2.3)

13.104.230 Minimum requirement #2— Preservation of natural drainage systems.

Natural drainage patterns shall be maintained, and discharges from the site shall occur at the natural location to the maximum extent practicable. (Ord. 95-003 § 7.2.4)

13.104.240 Minimum requirement #3— Source control of pollution.

Source control BMPs shall be applied to all projects to the maximum extent practicable. Source control BMPs shall be selected, designed, and maintained according to an approved manual.

An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop source control requirements that are tailored to a specific basin, however, in all circumstances, source control BMPs shall be required for all sites. (Ord. 95-003 § 7.2.5)

13.104.250 Minimum requirement #4 — Runoff treatment BMPs.

All projects shall provide treatment of stormwater. Treatment BMPs shall be sized to capture and treat the water quality design storm, defined as the six-month, 24-hour return period storm. The first priority for treatment shall be to infiltrate as much as possible of the water quality design storm, only if site conditions are appropriate and ground water quality will not be impaired. Direct discharge of untreated stormwater to ground water is prohibited. All treatment BMPs shall be selected, designed, and maintained according to an approved manual.

Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the local government.

An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop runoff treatment requirements that are tailored to a specific basin. (Ord. 95-003 § 7.2.6)

13.104.260 Minimum requirement #5 — Streambank erosion control.

The requirement below applies only to situations where stormwater runoff is discharged directly or indirectly to a stream, and must be met in addition to meeting the requirements in Minimum Requirement #4, Runoff Treatment BMPs:

Stormwater discharges to streams shall control streambank erosion by limiting the peak rate of runoff from individual development sites to 50 percent of the existing condition two-year, 24-hour design storm while maintaining the existing condition peak runoff rate for the 10-year, 24-hour and 100-year, 24-hour design storms. As the first priority, streambank erosion control BMPs shall utilize infiltration to the fullest extent practicable, only if site conditions are appropriate and ground water quality is protected. Streambank erosion control BMPs shall be selected, designed, and maintained according to an approved manual.

Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the local government.

An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop streambank erosion control requirements that are tailored to a specific basin. (Ord. 95-003 § 7.2.7)

13.104.270 Minimum requirement #6 — Wetlands.

The requirements below apply only to situations where stormwater discharges directly or indirectly through a conveyance system into a wetland, and must be met in addition to meeting the requirements in Minimum Standard #4, Runoff Treatment BMPs.

A. Stormwater discharges to wetlands must be controlled and treated to the extent necessary to meet the State Water Quality Standards, Chapter 173-201 WAC, or Ground Water Quality Standards, Chapter 173-200 WAC, as appropriate.

B. Discharges to wetlands shall maintain the hydroperiod and flows of existing site conditions to the extent necessary to protect the characteristic uses of the wetland. Prior to discharging to a wetland, alternative discharge locations shall be evaluated, and natural water storage and infiltration opportunities outside the wetland shall be maximized.

C. Created wetlands that are intended to mitigate for loss of wetland acreage, function and value shall not be designed to also treat stormwater.

D. In order for constructed wetlands to be considered treatment systems, they must be constructed on sites that are not wetlands and they must be managed for stormwater treatment. If these systems are not managed and maintained in accordance with an approved manual for a period exceeding three years these systems may no longer be considered constructed wetlands.

Discharges from constructed wetlands to waters of the state (including discharges to natural wetlands) are regulated under Chapter 90.48 RCW, Chapter 173-201 WAC, and Chapter 173-200 WAC.

~~E. Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the local government.~~

~~An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop requirements for wetlands that are tailored to a specific basin. (Ord. 95-003 § 7.2.8)~~

~~13.104.280 Minimum requirement #7— Water quality sensitive areas.~~

~~Where local governments determine that the minimum requirements do not provide adequate protection of water quality sensitive areas, either on-site or within the basin, more stringent controls shall be required to protect water quality.~~

~~Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the local government.~~

~~An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop requirements for water quality sensitive areas that are tailored to a specific basin. (Ord. 95-003 § 7.2.9)~~

~~13.104.290 Minimum requirement #8— Off-site analysis and mitigation.~~

~~All development projects shall conduct an analysis of off-site water quality impacts resulting from the project and shall mitigate these impacts. The analysis shall extend a minimum of one-fourth of a mile downstream from the project. The existing or potential impacts to be evaluated and mitigated shall include, at a minimum, but not be limited to:~~

~~A. Excessive sedimentation;~~

~~B. Streambank erosion;~~

~~C. Discharges to ground water contributing to recharge zones;~~

~~D. Violations of water quality standards;~~

~~E. Spills and discharges of priority pollutants. (Ord. 95-003 § 7.2.10)~~

~~13.104.300 Minimum requirement #9— Basin planning.~~

~~Adopted and implemented watershed-based basin plans may be used to modify any or all of the minimum requirements; provided that the level of protection for surface or ground water achieved by the basin plan will equal or exceed that which would be achieved by the minimum requirements in the absence of a basin plan. Basin plans shall evaluate and include, as necessary, retrofitting of BMPs for existing development and/or redevelopment in order to achieve watershed-wide pollutant reduction goals. Standards developed from basin plans shall not modify any of the above requirements until the basin plan is formally adopted and fully implemented by local government.~~

~~Basin plans shall be developed according to an approved manual. (Ord. 95-003 § 7.2.11)~~

~~13.104.310 Minimum requirement #10— Operation and maintenance.~~

~~An operation and maintenance schedule shall be provided for all proposed stormwater facilities and BMPs, and the party (or parties) responsible for maintenance and operation shall be identified. (Ord. 95-003 § 7.2.12)~~

~~13.104.320 Minimum requirement #11— Financial liability.~~

~~Performance bonding or other appropriate financial instruments shall be required for all projects to ensure compliance with these standards. (Ord. 95-003 § 7.2.13)~~

~~13.104.330 Exceptions.~~

~~Exceptions to Minimum Requirements #1 through #11 may be granted prior to permit approval and construction. An exception may be granted following a public hearing; provided that a written finding of fact is prepared that addresses the following:~~

~~A. The exception provides equivalent environmental protection and is in the overriding public interest; and that the objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering, are fully met;~~

~~B. That there are special physical circumstances or conditions affecting the property such that the strict application of these provisions would deprive the applicant of all reasonable use of the parcel of land in question, and every effort to find creative ways to meet the intent of the minimum standards has been made;~~

~~C. That the granting of the exception will not be detrimental to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and~~

~~D. The exception is the least possible exception that could be granted to comply with the intent of the minimum requirements. (Ord. 95-003 § 7.2.14)~~

Article VIII. Administration

13.104.340 Director.

The public works director or a designee shall administer this chapter and shall be referred to as the director. The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter. (Ord. 95-003 § 8.1)

13.104.350 Review and approval.

The director may approve, conditionally approve or deny an application for activities regulated by this chapter. (Ord. 95-003 § 8.2)

13.104.360 Enforcement authority.

The director shall enforce this chapter. (Ord. 95-003 § 8.3)

13.104.370 Construction and Installation Inspection.

All activities regulated by this chapter, except those exempt in SMC 13.104.090, shall be inspected by ~~or reported in a timely fashion to the director, using checklists provided by the city.~~ ~~The director shall inspect P~~ ~~projects shall be inspected~~ at various stages of the work requiring approval to determine that adequate control is being exercised ~~and enforcement actions taken as necessary.~~ ~~Stages of work requiring~~ ~~These inspections will include, but are not be limited to, the following:~~

- ~~1. Prior to site clearing and construction to assess site erosion potential~~ ~~preconstruction;~~
- ~~2. During construction to verify proper installation and maintenance of required erosion and sediment control BMPs and other approved plan components; land disturbing activities; such as installation of utilities, landscaping, and retaining walls; and~~
- ~~3. Upon completion of project construction and prior to final approval to ensure proper installation of permanent stormwater facilities and verify that a maintenance plan is completed and responsibility for maintenance is assigned for stormwater facilities. When required by the director, a special inspection and/or testing shall be performed.~~
- ~~4. All permanent stormwater facilities in new residential developments after final approval, to ensure system performance, once during winter (January-March) and once during summer (July-September) until 90 percent of the lots are constructed (or when~~

construction is stopped and the site is fully stabilized) to identify maintenance needs and enforce compliance with maintenance standards as needed. (Ord. 95-003 § 8.4)

Article IX. Enforcement^[AS23]

Article X. Exceptions^[AS24]

Chapter 13.108
STORMWATER MAINTENANCE

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Article I. Findings of Fact, Need and Purpose

13.108.010 Findings of fact.

City council of the city hereby finds that:

A. Stormwater facilities are a common feature of urban development.

B. In order to function properly so that they will perform as designed to prevent or remove pollution and/or to reduce flooding, stormwater facilities must be regularly inspected and maintained.

- C. If not adequately maintained, stormwater facilities can become sources of pollutants to surface water and ground water.
- D. If not adequately maintained, stormwater facilities could fail and cause considerable damage to the public. (Ord. 95-004 § 1.1)

13.108.020 Need.

The city council finds that this chapter is necessary in order to ensure maintenance of all stormwater facilities within the city by setting minimum standards for the inspection and maintenance of stormwater facilities. (Ord. 95-004 § 1.2)

13.108.030 Purpose.

The provisions of this chapter are intended to:

- A. Provide for inspection and maintenance of stormwater facilities in the city to provide for an effective, functional stormwater drainage system.
- B. Authorize the public works director to require that stormwater facilities be operated, maintained and repaired in conformance with this chapter.
- C. Establish the minimum level of compliance that must be met.
- D. Guide and advise all who conduct inspection and maintenance of stormwater facilities. (Ord. 95-004 § 1.3)

Article II. Definitions

13.108.040 Application.

For the purposes of this chapter, the following definitions shall apply:

- A. "Best management practice" or "BMP" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water. BMPs are listed and described in the manual.
- B. "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.
- C. "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.
- D. "Stormwater drainage system" means constructed and natural features that function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter stormwater.
- E. "Stormwater facility" means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catchbasins, oil/water separators, permeable pavements, sediment basins, and bioretention systems modular pavement. Stormwater facilities are described in the manual.
- F. "Stormwater Management Manual" or "manual" means the stormwater design, management, and maintenance guidance manual Stormwater Management Manual for the Puget Sound Basin, adopted by reference and prepared by Ecology and named in SMC 13.104.100 that contains BMPs to prevent or reduce pollution. The Stormwater Management Manual contains BMPs to prevent or reduce pollution and maintenance provisions for all BMPs. (Ord. 95-004 § 2)

Article III. General Provisions

13.108.050 Abrogation and greater restrictions.

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 95-004 § 3.1)

13.108.060 Interpretation.

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 95-004 § 3.2)

Article IV. Applicability

13.108.070 Conflict.

When any provision of any other ordinance of the city conflicts with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter. (Ord. 95-004 § 4)

Article V. General Requirements

13.108.080 Maintenance required.

All stormwater facilities shall be **inspected and maintained by the property owner** in accordance with this chapter and the Stormwater Management Manual. ~~Systematic, routine preventive maintenance is preferred.~~ (Ord. 95-004 § 5.1)

13.108.090 Minimum standards.

The following are the minimum standards for the maintenance of stormwater facilities:

- A. Facilities shall be inspected ~~annually~~ **at least once each calendar year** and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility, **or as otherwise authorized in writing by the director.**
- B. ~~Grassy swales and other biofilters~~ **Vegetated stormwater facilities** shall be inspected **at least monthly during the growing season** and mowed or replanted as necessary. Clippings are to be removed and properly disposed of.
- C. Where lack of maintenance is causing or contributing to a water quality **or flooding/overflow** problem, immediate action shall be taken to correct the problem. Within one month, the director shall revisit the facility to assure that it is being maintained. (Ord. 95-004 § 5.2)

13.108.100 Disposal of waste from maintenance activities.

Disposal of waste from maintenance activities shall be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials from stormwater maintenance activities, and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC. (Ord. 95-004 § 5.3)

13.108.110 Compliance.

Property owners are responsible for the **inspection**, maintenance, operation or repair of stormwater drainage systems and BMPs. Property owners shall maintain, operate and repair these facilities in compliance with the requirements of this chapter and the Stormwater Management Manual. (Ord. 95-004 § 5.4)

Article VI. Administration

13.108.120 Director.

The public works director or a designee/inspector shall administer this chapter and shall be referred to as the director. (Ord. 95-004 § 6.1)

13.108.130 Inspection authority.

The director is directed and authorized to develop an inspection program for stormwater facilities in the city. **A stormwater facility inspection may be conducted by the City or a qualified third party contractor hired by a private property owner, at the owner's expense, to conduct the inspection and submit the inspection results to the City. The contractor shall be pre-approved by the City.** (Ord. 95-004 § 6.2)

13.108.140 Enforcement authority.

The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter. (Ord. 95-004 § 6.3)

Article VII. Inspection Program

13.108.150 Inspection.

Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the ~~inspector~~**director or designee** is authorized to inspect, during regular working hours and at other reasonable times, all stormwater ~~facilities~~**drainage systems** within the city to determine compliance with the provisions of this chapter. (Ord. 95-004 § 7.1)

13.108.160 Procedures.

Prior to making any inspections, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

A. If the property, or any building or structure on the property, is unoccupied, the inspector shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

B. If after reasonable effort, the inspector is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the stormwater ~~drainage system~~**facility** creates an imminent hazard to persons or property, the inspector may enter.

C. Unless entry is consented to by the owner or person(s) in control of the property or portion of the property, or unless conditions are reasonably believed to exist that create imminent hazard,

the inspector shall obtain a search warrant prior to entry, as authorized by the laws of the state of Washington.

D. The inspector may inspect the stormwater ~~drainage system~~ **facilities** without obtaining a search warrant provided for in subsection C above; provided the inspection can be conducted while remaining on the public property or other property on which permission to enter is obtained. (Ord. 95-004 § 7.2)

13.108.170 Inspection schedule.

The director shall ~~may~~ establish a master inspection and maintenance schedule ~~to~~ **for** inspection of appropriate stormwater facilities that are not owned by the city. **Required** inspections shall be annual **unless otherwise authorized in writing by the director** for facilities constructed under provisions of the manual. Inspection of existing facilities shall be annual upon the city adopting a stormwater utility that funds an inspection program. Critical stormwater facilities may require a more frequent inspection schedule. (Ord. 95-004 § 7.3)

13.108.180 Inspection and maintenance records.

All facility owners shall report inspection and maintenance records to the director at least once each calendar year [AS29].

As existing stormwater facilities are encountered, they shall be added to the master inspection and maintenance schedule. Records of new stormwater facilities shall include the following:

- A. As-built plans and locations.
- B. Findings of fact from any exemption granted by the local government.
- C. Operation and maintenance requirements and records of inspections, maintenance actions and frequencies.
- D. Engineering reports, as appropriate. (Ord. 95-004 § 7.4)

13.108.190 Reporting requirements.

The director shall report annually to the city council about the status of the inspections. The annual report may include, but need not be limited to, the proportion of the components found in and out of compliance, the need to upgrade components, enforcement actions taken, compliance with the inspection schedule, the resources needed to comply with the schedule, and comparisons with previous years. (Ord. 95-004 § 7.5)

Article VIII. Enforcement

13.108.200 General.

Enforcement action shall be **in accordance with chapter 13.104.380** [AS30] ~~taken whenever a person has violated any provision of this chapter. The choice of enforcement action taken and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the persons subject to the enforcement action.~~ (Ord. 95-004 § 8.1)

13.108.210 Orders.

~~The director shall have the authority to issue to an owner or person an order to maintain or repair a component of a stormwater facility or BMP to bring it in compliance with this chapter, the Stormwater Management Manual and/or city regulations. The order shall include:~~

- ~~A. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;~~

B. A notice that the violation, or the potential violation, cease and desist and, in appropriate cases, the specific corrective actions to be taken; and

C. A reasonable time to comply, depending on the circumstances. (Ord. 95-004 § 8.2)

13.108.220 Civil penalty.

A person who fails to comply with the requirements of this chapter or who fails to conform to the terms of an approval or order issued shall be subject to a civil penalty.

A. Amount of Penalty. The penalty shall be \$100.00 for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.

B. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

C. Notice of Penalty. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the city. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist and, in appropriate cases, require necessary corrective action within a specific time.

D. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within 10 days of receipt of the penalty to the city for remission or mitigation of such penalty. Upon receipt of the application, the city council may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

E. Appeal of City Penalty. Persons incurring a penalty imposed by the director may appeal in writing within 10 days of the receipt of the penalty to the city council. The city council's decision may be appealed to the Supreme Court within 10 days of the decision. (Ord. 95-004 § 8.3)

13.108.230 Penalties due.

Penalties imposed under this section shall become due and payable 30 days after receiving notice of penalty, unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable 30 days after receipt of the decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable after all review proceedings and a final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed is not paid within the time specified in this section, the city may take actions necessary to recover such penalty. (Ord. 95-004 § 8.4)

13.108.240 Penalties recovered.

Penalties recovered shall be paid to a fund dedicated to enforcement and/or enhancement of the stormwater management program. (Ord. 95-004 § 8.5)

13.108.250xxx Maintenance order. [AS31]

~~The director shall have the authority to issue to an owner or person an order to maintain or repair a component of a stormwater facility to bring it into compliance with this chapter and the Stormwater Management Manual. The order shall include:~~

~~1. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;~~

~~2. A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and~~

~~3. A reasonable time to comply, depending on the circumstances.~~

13.104.XXX Voluntary Correction. [AS32]

~~In the event a property owner or contractor violates any of the provisions of this chapter, city staff shall work with the violator to develop a voluntary compliance agreement. A “voluntary compliance agreement” is defined as a legally binding agreement entered into between the City and the alleged violators, by which the violator(s) acknowledge the existence of the violation, waive all appeal rights, agree to comply with code provisions, and perform specific activities such as paying a fine in an amount stipulated between the violator and the City.~~

Chapter 8.36 FLOOD DAMAGE PREVENTION

Sections:

- [8.36.010](#) Statutory authorization and findings of fact.
- [8.36.020](#) Purpose.
- [8.36.030](#) Definitions.
- [8.36.040](#) General provisions.
- [8.36.042](#) Compliance required.
- [8.36.044](#) Interpretation and application.
- [8.36.046](#) Disclaimer of liability.
- [8.36.050](#) Administration.
- [8.36.060](#) Variance procedures.
- [8.36.070](#) Permit requirements.
- [8.36.080](#) Development standards.

SMC 8.36.042 Compliance required.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter as well as all other applicable regulations including, but not limited to the Stormwater Manual adopted in SMC 13.104.100. (Ord. 2006-018 § 1)

Chapter 18.80 CRITICAL AND ENVIRONMENTALLY SENSITIVE AREAS PROTECTION

Sections:

- [18.80.010](#) Purpose.
- [18.80.030](#) Definitions.
- [18.80.040](#) Applicability.
- [18.80.045](#) Critical area review.
- [18.80.050](#) Permitted uses and development restrictions.
- [18.80.055](#) Exempt activities.
- [18.80.060](#) Submittal requirements and support information required.
- [18.80.070](#) Development standards.**
- [18.80.075](#) Buffer and setback on sites with existing primary structure(s).
- [18.80.080](#) Development exceptions.
- [18.80.090](#) Notice to title and protective tracts.
- [18.80.100](#) Critical aquifer recharge areas.**
- [18.80.110](#) Securities and enforcement.

18.80.070 Development standards.

F. Wetlands.

5. Buffers.

...The following measures are required, as applicable, to receive the buffer widths listed above.

- Outdoor lighting from the development shall be designed and installed to prevent direct casting of light into adjacent wetland areas. Final design shall be reviewed and approved by the department of community development prior to permit issuance.
- Activity that generates noise shall be located away from wetlands. If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.
- The applicant shall prepare a restrictive covenant, to be placed upon the deed for the property, that prohibits use of pesticides within 150 feet of the delineated on-site wetland area. Proof of the recorded covenant shall be provided to the city prior to permit issuance.
- Surface water management shall be consistent with low impact development (LID) practices as set forth in ~~the 2005 State Department of Ecology document entitled “Stormwater Management Manual for Western Washington” and the 2005 Puget Sound Action Team and Washington State University Pierce~~

~~City Extension document entitled “Low Impact Development: Technical Guidance Manual for Puget Sound.” Stormwater Management Manual specified in SMC 13.104.100.~~ Final design shall be reviewed and approved by the public works department prior to permit issuance.

- Permanent signage on the boundary of a wetland buffer to protect its functions and values. Fencing may be required if requested by the wetland biologist to protect its functions and values. Fencing design shall not interfere with fish and wildlife migration and shall minimize impacts to the wetland and its associated habitat.
- The applicant shall utilize dust control best management practices (BMP) during development activities. Such practices shall be consistent with ~~the Stormwater Management Manual specified in SMC 13.104.100. “BMP C140” of the 2005 State Department of Ecology document entitled “Stormwater Management Manual for Western Washington.”~~
- Surface water from areas adjacent to on-site delineated wetland areas shall be channelized and treated prior to discharge into wetland buffer areas. Surface water treatment shall be consistent with ~~the Stormwater Management Manual specified in SMC 13.104.100. “BMP T511” of the 2005 State Department of Ecology document entitled “Stormwater Management Manual for Western Washington.”~~ Final design shall be reviewed and approved by the city public works department prior to permit issuance.
- All treated surface water proposed for discharge into any on-site delineated wetland area shall be conveyed in a manner consistent with those practices set forth in “Guide Sheet 2: Wetland Protection Guidelines” of the 2005 State Department of Ecology document entitled ~~the Stormwater Management Manual specified in SMC 13.104.100. “Stormwater Management Manual for Western Washington.”~~ Final design shall be reviewed and approved by the city public works department prior to permit issuance.
- Existing on-site drainage system facilities shall be reviewed by a Washington State-licensed engineer to determine their ability to accommodate the increased volume of surface water created by the new development. The facilities shall be modified as necessary with facility design consistent with the direction provided in ~~the Stormwater Management Manual specified in SMC 13.104.100. “Volume III” of the 2005 State Department of Ecology document entitled “Stormwater Management Manual for Western Washington.”~~ Final design shall be reviewed and approved by the city public works department prior to permit issuance.
- Surface water from impervious surfaces and lawns located adjacent to on-site delineated wetland areas shall be channelized and treated prior to discharge into wetland buffer areas. Surface water treatment shall be consistent with those practices contained in ~~the Stormwater Management Manual specified in SMC 13.104.100. “Volume V” of the 2005 State Department of Ecology document entitled “Stormwater Management Manual for Western Washington.”~~ Final design shall be reviewed and approved by the city public works department prior to permit issuance.
- Apply integrated pest management.

- The delineated on-site wetland area shall be placed in a separate tract as prescribed in SMC 18.80.090.

18.80.080 Development exceptions.

E. Drainage Facilities. Category III or IV wetlands and their buffers, and stream buffers, may be altered for use as a public drainage facility; provided, that all requirements of the city stormwater management plan [identified in SMC 13.104](#) and all other local, state and federal laws are satisfied, and so long as increased and multiple natural resource functions are achievable and the benefits outweigh any lost resource. The department of community development director may approve public drainage facilities in a buffer only when he/she determines that long- term impacts are minimal or when there are no practicable or reasonable alternatives and mitigation is provided. Drainage facilities shall be limited to the outer 25 percent of a buffer.

18.80.100 Critical aquifer recharge areas.

F. Performance Standards.

4. Land Divisions.

f. Remove contaminants from stormwater runoff prior to their point of entry into surface or ground water resources using available and reasonable best management practices in conformance with the [Department of Ecology’s “Stormwater Management Manual for the Puget Sound Basin.” as defined in SMC 13.04.100.](#)

6. Stormwater Standards for Commercial and Industrial Uses. All new commercial and industrial land uses that have greater than 5,000 square feet of impervious area, or handle, store, dispose, transport or generate hazardous substances/wastes defined as dangerous or extremely dangerous wastes under Chapter 173-303 WAC (regardless of quantity), that may come in contact with stormwater runoff, including, but not limited to, gas stations and distributors, vehicle repair and servicing, carwashes, trucking companies, and paint shops, shall remove contaminants prior to their point of entry into surface or ground water resources using available and reasonable best management practices in conformance with the [current version of the Department of Ecology Stormwater Management Guidelines as adopted by the city SMC 13.104](#), at minimum. Maintenance of stormwater facilities conforming with SMC 13.108 must be assured as a permit condition.

**SEQUIM CITY PLANNING COMMISSION
AGENDA COVER SHEET**

MEETING DATE: September 6, 2016

FROM: Kristina Nelson-Gross, City Attorney; Chris Hugo, Community Development Director

SUBJECT/ISSUE: Wireless Communications Facilities (WCFs)

Discussion dates	August 16, 2016			
CATEGORY				Time Needed for Presentation
<input type="checkbox"/>	Public Meeting	<input type="checkbox"/>	New Business	30 minutes
<input checked="" type="checkbox"/>	Unfinished Business			

PROBLEM/ISSUE STATEMENT: The Federal Communications Commission (FCC) regulates wireless communications facilities and imposes limitations on the authority local jurisdictions have over WCFs. The City currently does not have an ordinance on WCFs and has adopted a moratorium to give staff time to draft one that complies with federal law. The moratorium expires October 25, 2016.

LIST OF ATTACHMENTS:

1. DRAFT Wireless Communications Facilities Ordinance

DISCUSSION / ANALYSIS: The major sources of federal regulation are from the 1996 Telecommunications Act and the 2012 Middle Class Tax Relief and Job Creation Act (aka "Spectrum Act"). These laws work together to limit a local agency's ability to regulate wireless facilities.

Staff has included a draft ordinance with proposed language specific to the City of Sequim's needs. We are looking for Commission input regarding height limitations, landscaping, and other requirements over which the City has some control. The purpose of today's meeting is for the Commission to review the proposal and provide feedback and direction to staff. Staff will use this information to bring back a draft ordinance to present at a public meeting for September 20th.

RECOMMENDATION: Set a public meeting for September 20th, at which time staff will be looking for a recommendation for adoption by the City Council.

MOTION: I move to schedule a public meeting for September 20th for public comment on the proposed Wireless Communications Facilities ordinance that adds new SMC chapters 18.61 and 18.61A amends existing chapters 18.20, 18.56 and 18.57.

CITY OF Sequim
ORDINANCE NO. ____

An Ordinance Relating to Wireless Communication Facilities; amending parts of SMC Chapters 18.20, 18.56 and 18.57 relating to towers, adopting two new chapters, Chapter 18.61 and SMC 18.61A, relating to regulations effecting wireless communication facilities;

WHEREAS, Chapters SMC 18.20, 18.44, 18.56 and 18.57 currently govern the City's regulation of all towers; and

WHEREAS, some of the existing regulations which apply to wireless communication facilities are more than ten years old and federal laws, regulations and court decisions, wireless technology and consumer usage have reshaped the environment within which Wireless Communications Facilities are permitted and regulated; and

WHEREAS, federal laws and regulations that govern local zoning standards and procedures for wireless communications have substantially changed since the City adopted its zoning codes related to towers; and

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the "1996 Act"), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, in 2012 Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter "Section 6409") of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the "FCC") to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the FCC's 2015 Report and Order clarifying Eligible Facility Request Rules, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, This Chapter also implements Section 6409(a) of the Spectrum Act and the FCC's Report & Order, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

WHEREAS, on October 26, 2015, the City Council adopted Ordinance No. 2015-018 imposing a moratorium on applications for new wireless communications support towers in the City's residential zones; and

WHEREAS, following the adoption of the moratorium, the City adopted findings after a public hearing regarding and supporting the moratorium and has other cities' regulations relating to wireless communications facilities, particularly the City of Spokane's regulations; and

WHEREAS, following appropriate procedures and public notice, on _____, the Sequim Planning Commission conducted a meeting on proposed amendments to the City's wireless communication facility regulations and recommended that the City Council approved the proposed amendments; and

WHEREAS, at the conclusion of its public meeting, the Planning Commission approved written findings, conclusions, and recommendation (the "Planning Commission Recommendation") which is incorporated into this Ordinance as if set forth fully herein; and

WHEREAS, on _____, the City Council conducted a lawfully-noticed public hearing and received the report and recommendation of the Planning Commission regarding the Ordinance which modifies existing and establishes new code sections relating to wireless communication facilities; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order bring the City's development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest; and

WHEREAS, the City Council of the City of Sequim desires to update its local standards and procedures to protect and promote the public health, safety and welfare of the City of Sequim community, to reasonably regulate wireless communication facilities aesthetics, to protect and promote the City's unique character in a manner consistent with State and federal laws and regulations;

NOW, THEREFORE, THE CITY OF Sequim DOES ORDAIN:

SECTION 1. That Chapters 18.20, 18.56 and 18.57 of the Sequim Municipal Code are hereby amended to read as set forth in Exhibit "A."

Exhibit"A"

18.20.020 Residential districts and uses.

The following residential districts shall be designated consistent with the city of Sequim comprehensive plan optimum land use map:

A. R-II, Single-Family Residences. The intent of the R-II zoning district is to provide land for lower residential densities within the city. The R-II zone provides for consistency and predictability in established single-family neighborhoods. New subdivisions shall provide a minimum of three and a maximum of five dwelling units per acre. The minimum number of units may be reduced based on access constraints or the presence of critical areas.

1. Permitted uses in the R-II zone include the following: Agriculture; bed and breakfast inns (home business) (up to and including two guest rooms); churches or religious places of worship; day care, family day care homes (up to 12 charges); group homes (other), 12 or fewer persons; group homes for the functionally disabled (12 or fewer persons); residences, single-family; electric vehicle charging station – private.

2. Conditional uses in the R-II zone include the following:

a. Major. Day care centers (more than 12 charges); group homes for the functionally disabled (13 or more persons); mobile home and manufactured home parks consistent with Chapter 18.62 SMC; special needs housing; towers, antennas (including amateur radio), and supporting structures 65 feet or less as set forth in SMC 18.61.

b. Minor. Agricultural processing, light; bed and breakfast inns (three to six guest rooms); equestrian facilities; nursing homes and congregate care facilities (up to 10 residents); residences, multifamily, in conformance with R-II densities.

3. Special uses in the R-II zone include the following: Cemeteries; communication relay or transmission facilities; hospitals and sanitariums (except animal clinics, hospitals); parks, playgrounds, golf courses, recreation or community centers, swimming pools, public and private; schools, public; towers, antennas, and supporting structures, including amateur radio towers, 65 feet or more as set forth in SMC 18.61; electric vehicle charging station – public.

B. R-III. The intent of the R-III zoning district is to allow moderate density residential development within the city. New subdivisions shall provide a minimum of six and a maximum of 10 dwelling units per acre. Medium density single-family homes and multifamily residential developments are allowed in the R-III zoning designation.

1. Permitted uses within the R-III zone include the following: Bed and breakfast inns (home business) (up to and including two guest rooms); churches or religious places of worship; day care, family day care homes (up to 12 charges); group homes (other), 12 or fewer persons; group homes for the functionally disabled (12 or fewer persons); nursing homes and congregate care facilities (up to 10 residents); residences, single-family; electric vehicle charging station – private; residences, multifamily in conformance with R-III densities; residences, manufactured homes, consistent with Chapter 18.62 SMC.

2. Conditional uses within the R-III zone include the following:

a. Major. Agricultural process, light; clinics; convenience stores, neighborhood; day care center (more than 12 charges); nursing home and congregate care facilities (over 10 residents); towers, antennas (including amateur radio), and supporting structures less than 65 feet as set forth in SMC 18.61; electric vehicle charging station – public.

b. Minor. Bed and breakfast inns (three to six guest rooms); bakeries, retail.

3. Special uses within the R-III zone include the following: Cemeteries; communication relay or transmission facilities; group homes for the functionally disabled (13 or more persons); hospitals and sanitariums (except animal clinics, hospitals); parks, playgrounds, golf courses, recreation or community centers, swimming pools, public and private; schools, public; special needs housing; towers, antennas, and supporting structures, including amateur radio, more than 65 feet as set forth in SMC 18.61; electric vehicle charging station – public.

C. R-IV. The intent of the R-IV zoning district is to provide for high density multifamily development (including duplexes, triplexes, and apartments) and small lot, single-family cluster/cottage-style residential development. New subdivisions shall provide a minimum of 11 and a maximum of 16 dwelling units per acre.

1. Permitted uses within the R-IV zone include the following: Bed and breakfast inns (home business) (up to and including two guest rooms); churches or religious places of worship; day care, family day care homes (up to 12 charges); group homes (other), 12 or fewer persons; group homes for the functionally disabled (12 or fewer persons); small lot, single-family cluster/cottage-style residential development in conformance with R-IV densities; electric vehicle charging station – private; residences, multifamily; residences, manufactured homes, consistent with Chapter 18.62 SMC.

2. Conditional uses within the R-IV zone include the following:

a. Major. Agricultural processing, light; clinics; convenience store, neighborhood; nursing homes and congregate care facilities (over 10 residents); towers, antennas (including amateur radio), and supporting structures less than 65 feet as set forth in SMC 18.61; electric vehicle charging station – public.

b. Minor: Bakeries, retail; barber and beauty shops; bed and breakfast inns (three to six guest rooms); day care centers (more than 12 charges).

3. Special uses in the R-IV zone include the following: Communication relay or transmission facilities; group homes for the functionally disabled (13 or more persons); hospitals and sanitariums (except animal clinics, hospitals); parks, playgrounds, golf courses, recreation or community centers, swimming pools, public and private; schools, public; special needs housing; towers, antennas, and supporting structures, including amateur radio, more than 65 feet as set forth in SMC 18.61. (Ord. 2012-002 § 2 (Exh. B); Ord. 2011-012 § 1 (Exh. A); Ord. 2011-003 § 1 (Att. 3); Ord. 2010-012 § 1 (Exh. 1); Ord. 2006-016 § 3; Ord. 97-019 § 4, Exh. B)

18.20.030 Commercial districts.

The following commercial districts shall be designated consistent with the city of Sequim comprehensive plan optimum land use map:

A. C-I(NC) – Neighborhood Commercial. The intent of the C-I(NC) zoning district is to provide commercial convenience services, limited in size and uses, for neighborhood residences. Single-family and multifamily residential uses are permitted when located above ground-floor commercial uses and shall meet International Building Code standards. Residential densities shall not exceed the density allowed in the R-IV zoning district.

1. Permitted uses in the C-I(NC) zone include the following: Alcoholic beverage sale (packaged); bakeries, retail; barbers and beauty shops; churches or religious places of worship; convenience stores, neighborhood; day care centers (more than 12 charges); dry cleaners and laundries; hardware stores; nursery, landscape material; lumber yards; offices, including professional offices, agencies and services; pharmacy, dispensing; photographic studios; private gymnasiums, fitness centers, tanning salons, dance studios, body building, and martial arts, etc.; radio, television and small electronics repair and service; restaurants; schools, private; towers, antennas (including amateur radio), and supporting structures 65 feet or less as set forth in SMC 18.61; veterinary hospitals; electric vehicle charging stations, public and private.

2. Conditional uses in the C-I(NC) zone include the following:

a. Major. Bars and taverns; communication relay or transmission facilities; towers, antennas, and supporting structures, including amateur radio towers, 65 feet or more as set forth in SMC 18.61.

b. Minor. Agricultural processing, light; bed and breakfast inns (three to six guest rooms); bed and breakfast inns (home business) (up to and including two guest rooms); espresso stands (drive-through).

3. Special uses in the C-I(NC) zone include the following: Cemeteries; essential public facilities and utilities; parks, playgrounds, golf courses, recreation or community centers, swimming pools, public and private.

B. C-II(G) – General Retail District. The intent of the C-II(G) zoning district is to allow retail and service sector businesses. Single-family and multifamily residential uses are permitted when located above ground-floor retail and service sector commercial uses and shall meet International Building Code standards. Residential densities shall not exceed the density allowed in the R-IV zoning district.

1. Permitted uses in the C-II(G) zone include the following: Alcoholic beverage sale (packaged); bakeries, retail; bakeries, wholesale; banks and financial institutions; barbers and beauty shops; car washes; churches or religious places of worship; clinics; convenience stores; day care centers (more than 12 charges); dry cleaners and laundries; equipment rental and repair; espresso stands (drive-through); hardware stores; laboratories for research and testing; lock and gunsmiths; lumber yards; Washington State Liquor Control Board licensed marijuana (recreational/medical use) retail store; nursery, landscape material; offices, including professional offices, agencies and services; pharmacy, dispensing; photographic studios; plumbing shops and yards; printing, publishing and reproduction establishments; private gymnasiums, fitness centers, tanning salons, dance studios, body building, and martial arts, etc.; radio, television and small electronics repair and service; recycling, low intensity; repair shops (not auto); restaurants; retail stores less than 5,000 square feet; schools, private; sign manufacture, painting and maintenance; towers, antennas (including amateur radio), and supporting structures, less than 65 feet as set forth in SMC 18.61; undertaking establishments; vehicle repair and service; veterinary hospitals; electric vehicle infrastructure.

2. Conditional uses in the C-II(G) zone include the following:

a. Major: Bars and taverns; communication relay or transmission facilities; mini-storage; nursing homes and congregate care facilities (over 10 residents); recreational vehicle parks, seasonal (up to 180-day stay); recreational vehicle parks, transient (up to 30-day stay); theaters, drive-in; transient accommodations (including hotels and motels); towers, antennas, and supporting structures, including amateur radio towers, 65 feet or more as set forth in SMC 18.61.

b. Minor: Agricultural processing, light; bed and breakfast inns (three to six guest rooms); bed and breakfast inns (home business) (up to and including two guest rooms); espresso stands (sidewalk); group homes (other), 12 or fewer persons; group homes for the functionally disabled (12 or fewer persons); nursing homes and congregate care facilities (up to 10 residents).

3. Special uses in the C-II(G) zone include the following: Cemeteries; essential public facilities and utilities; group homes (other), 13 or more persons; group homes for the functionally disabled (13 or more persons); hospitals and sanitariums (except animal clinics, hospitals); parks, playgrounds, golf courses, recreation or community centers, swimming pools, public and private; special needs housing.

C. C-II(M) – Medical and Professional Offices. The intent of the C-II(M) zoning district is to provide for medical and professional offices and supporting services. Single-family and multifamily residential uses are permitted when located above ground-floor permitted uses and shall meet International Building Code standards. Residential densities shall not exceed the density allowed in the R-IV zoning district.

1. Permitted uses in the C-II(M) zone include the following: Banks and financial institutions; barbers and beauty shops; churches or religious places of worship; clinics; espresso stands (sidewalk); hospitals and sanitariums (except animal clinics, hospitals); laboratories for research and testing; nursing homes and congregate care facilities (up to 10 residents); nursing homes and congregate care facilities (over 10 residents); offices, including professional offices, agencies and services; pharmacy, dispensing; private gymnasiums, fitness centers, tanning salons, dance studios, body building, and martial arts, etc.; recycling, low intensity; restaurants; towers, antennas (including amateur radio), and supporting structures 65 feet or less as set forth in SMC 18.61; undertaking establishments; veterinary hospitals; electric vehicle infrastructure.

2. Conditional uses in the C-II(M) zone include the following:

a. Major. Communication relay or transmission facilities; day care centers (more than 12 charges); group homes (other), 13 or more persons; group homes for the functionally disabled (13 or more persons); special needs housing; towers, antennas, and supporting structures, including amateur radio, 65 feet or more as set forth in SMC 18.61.

b. Minor. Bakeries, retail; group homes (other), 12 or fewer persons; group homes for the functionally disabled (12 or fewer persons).

3. Special uses in the C-II(M) zone include the following: Cemeteries; essential public facilities and utilities; parks, playgrounds, golf courses, recreation or community centers, swimming pools, public and private.

D. C-II(S) – Shoreline Commercial District. The intent of the C-II(S) zoning district is to provide for commercial, retail, and service uses related to or dependent upon the shoreline. Transient accommodations supporting tourism are also intended uses. Single-family and multifamily residential uses are permitted when located above ground-floor permitted uses and shall meet International Building Code standards. Residential densities shall not exceed the density allowed in the R-IV zoning district.

1. Permitted uses within the C-II(S) zone include the following: Alcoholic beverage sale (packaged); aquaculture; bakeries, retail; barbers and beauty shops; boat building and repair, commercial; boat marinas; churches or places of worship; convenience stores, neighborhood; espresso stands (sidewalk); private gymnasiums, fitness centers, tanning salons, dance studios, body building, and martial arts, etc.; restaurants; towers, antennas (including amateur radio), and supporting structures 65 feet or less as set

forth in SMC 18.61; transient accommodations (including hotels and motels); electric vehicle infrastructure.

2. Conditional uses within the C-II(S) zone include the following:

a. Major. Bed and breakfast inns (three to six guest rooms); communication relay and transmission facilities; recreational vehicle parks, seasonal (up to 180 days); recreational vehicle parks, transient (up to 30 days); towers, antennas, and supporting structures, including amateur radio, 65 feet or more as set forth in SMC 18.61.

b. Minor. Offices, including professional offices, agencies, and services.

3. Special uses within the C-II(S) zone include the following: Essential public facilities and utilities; parks, playgrounds, golf courses, recreation or community centers, swimming pools, public and private.

E. C-III – General Commercial. The intent of the C-III zoning district is to provide areas for diversified commercial activities that serve a more regional clientele. Single-family and multifamily residential uses are permitted when located above ground-floor permitted uses and shall meet International Building Code standards. Residential densities shall not exceed the density allowed in the R-IV zoning district.

1. Permitted uses within the C-III zone include the following: Alcoholic beverage sale (packaged); bakeries, retail; bakeries, wholesale; banks and financial institutions; barbers and beauty shops; boat building and repair, commercial; bus stations and terminals; car washes; churches or religious places of worship; convenience stores; dry cleaners and laundries; equipment rental and repair; espresso stands (sidewalk); gas stations; grocery stores; hardware stores; kennels; laboratories for research and testing; lock and gunsmiths; Washington State Liquor Control Board licensed marijuana (recreational/medical use) retail store; nursery, landscape material; offices, including professional offices, agencies and services; pawnshops or secondhand stores; pharmacy, dispensing; photographic studios; plumbing shops and yards; printing, publishing and reproduction establishments; private gymnasiums, fitness centers, tanning salons, dance studios, body building, and martial arts, etc.; radio, television and small electronics repair and service; radio, television broadcasting; recycling, low intensity; regional retail; repair shops (not auto); restaurants; restaurants, fast food; retail stores; schools, private; sign manufacture, painting and maintenance; theaters, excluding drive-in theaters; towers, antennas (including amateur radio), and supporting structures 65 feet or less as set forth in SMC 18.61; transient accommodations (including hotels and motels); undertaking establishments; vehicle repair and service; veterinary hospitals; warehousing associated with retail uses; electric vehicle infrastructure.

2. Conditional uses within the C-III zone include the following:

a. Major. Agricultural processing, light; bars and taverns; communication relay or transmission facilities; construction yards; day care centers (more than 12 charges); recreational vehicle parks, seasonal (up to 180-day stay); recreational vehicle parks, transient (up to 30-day stay); towers, antennas, and supporting structures, including amateur radio, 65 feet or more as set forth in SMC 18.61.

b. Minor. Espresso stands (drive-through).

3. Special uses within the C-III zone include the following: Essential public facilities and utilities; group homes (other), 13 or more persons; group homes for the functionally disabled (13 or more persons); parks, playgrounds, golf courses, recreation or community centers; swimming pools, public and private; special needs housing. (Ord. 2015-012 § 1 (Exh. A); Ord. 2014-003 § 1 (Exh. A); Ord. 2012-002 § 2

(Exh. B); Ord. 2011-012 § 1 (Exh. A); Ord. 2011-003 § 1 (Att. 3); Ord. 2005-028 § 2; Ord. 97-019 § 4, Exh. B)

18.20.050 Mixed use district.

The following mixed use district shall be designated consistent with the city of Sequim comprehensive plan optimum land use map:

A. MU – Mixed Use. The intent of the mixed use zoning district is to allow campus-style business parks, industrial parks (light), professional offices, general retail, restaurants, and residential uses under specified conditions to create shared settings of living and working.

B. Permitted uses within the MU zone include the following: Agricultural processing, light; agriculture; bakeries, retail and wholesale; boat building and repair, commercial; construction yards; churches/religious places of worship; industrial parks; industrial uses, light; laboratories for research and testing; nursery, landscape material; professional offices; printing, publishing and reproduction; radio, television broadcasting; recycling, low intensity; general retail; restaurants, including fast food; residential use subject to the provisions of subsection (B)(1) of this section; sign manufacture, painting and maintenance; theaters; towers, (including amateur radio towers), antennas, supporting structures, 65 feet or less as set forth in SMC 18.61; vehicle repairs and service; vehicle sales, repair, and service; warehousing associated with retail uses; and wholesale; electric vehicle infrastructure*.

1. Residential use is allowed in the MU zone subject to the following conditions:

a. Residential density and development standards shall be as provided for the R-IV zone;

b. Residential use is only permitted if developed as an element of a common site plan and developed at the same time with a permitted nonresidential use, whether integrated vertically within a common building or integrated horizontally in a master-planned site development; and

c. To ensure the establishment of mixed use development, the minimum ratio of commercial use, either retail or office, to residential use is 1,000 square feet of commercial use per 10 residential units, developed concurrently or in use-balanced phases of development.

C. Conditional uses within the MU zone include the following:

1. Major. Communication relay or transmission facilities; day care centers (over 12 charges); mini-storage; recreational vehicle park, seasonal (up to 180 days); recreational vehicle park, transient (up to 30 days); schools, private; theaters, drive-in; towers, antennas, supporting structures, including amateur radio, 65 feet or more as set forth in SMC 18.61.

2. Minor. Bed and breakfast inns (three to six guest rooms); bed and breakfast inns (home business) (up to and including two guest rooms).

D. Special uses within the MU zone include the following: Cemeteries; hazardous waste treatment and storage facilities – moderate and high risk; hospitals and sanitariums (except animal clinics); parks, playgrounds, golf courses, recreation centers; swimming pools; schools, public. (Ord. 2012-013 § 1 (Exh. A); Ord. 2012-002 § 2 (Exh. B); Ord. 2011-012 § 1 (Exh. A); Ord. 2011-003 § 1 (Att. 3); Ord. 2005-028 § 3; Ord. 97-019 § 4, Exh. B)

*Code reviser's note: Ordinance 2012-013 amended this section inadvertently not taking into account the amendments of Ordinance 2012-002, adding electric vehicle infrastructure as a permitted use.

18.20.060 Other districts.

The following other districts shall be designated consistent with the city of Sequim comprehensive plan optimum land use map:

A. PF – Public Facilities. The intent of the public facilities zoning district is to provide lands for publicly owned parks, government buildings, civic buildings, utilities, schools, and fire stations, and other similar public uses.

1. Permitted uses in the PF zone include the following: Airports and airfields; boat marinas; bus stations and terminals; cemeteries; communication relay or transmission facilities; construction yards; correctional institutions; essential public facilities and utilities; government buildings; group homes (other), 13 or more persons; group homes for the functionally disabled (13 or more persons); hazardous waste treatment and storage facilities – high risk; hazardous waste treatment and storage facilities – moderate risk; hospitals and sanitariums (except animal clinics); laboratories for research and testing; parks, playgrounds, golf courses, recreation centers; swimming pools; recycling, high intensity; recycling, low intensity; schools, public; special needs housing; towers, antennas (including amateur radio), supporting structures, 65 feet or less as set forth in SMC 18.61; towers, antennas, supporting structures, including amateur radio, 65 feet or more as set forth in SMC 18.61; electric vehicle infrastructure.

B. RDP – Research and Development Park. The intent of the research and development park zoning district is to establish a land use designation that allows campus-style research and development facilities, which includes but is not limited to environmental, biotechnology, energy efficiency, and marine and coastal security research. Furthermore, the RDP zone also allows private and public educational partnerships, which may also provide on-site educational facilities.

1. Permitted uses within the RDP zone include the following: Accessory uses; aquaculture; day care centers for on-site personnel; laboratories for research and testing; offices, professional; towers, antennas (including amateur radio), supporting structures, 65 feet or less as set forth in SMC 18.61; electric vehicle infrastructure.

2. Conditional uses within the RDP zone include the following:

a. Major. Communication relay or transmission facilities; towers, antennas, supporting structures, including amateur radio, 65 feet or more as set forth in SMC 18.61. (Ord. 2012-002 § 2 (Exh. B); Ord. 2011-012 § 1 (Exh. A); Ord. 2011-003 § 1 (Att. 3); Ord. 2009-046 § 4 (Exh. D); Ord. 97-019 § 4, Exh. B)

18.44.030 Exceptions.

The bulk, dimensional and general requirements found in SMC 18.44.020 shall apply to specifically permitted and conditional uses tabulated in Chapter 18.60 SMC, excepting the following:

A. The maximum building height provided in SMC 18.44.020 shall not apply to towers and antennas as set forth in SMC 18.61; provided, that towers and antennas are set back from all exterior property lines at a minimum ratio of one foot of setback for every three feet of vertical height as measured from grade.

B. Antennas as set forth in SMC 18.61, satellite dishes, or other communication devices shall not be located in the front setback area.

C. All structures excepting fences, hedges, and berms shall not be established within the front setback area.

D. Maximum building height in the C-II(G), C-III, and MU zones may be exceeded only under the following exceptions:

1. Elevator towers, HVAC equipment, solar and wind energy facilities, building maintenance equipment, and communications antennas or dishes may exceed the height limit of the zone or the greatest height of the finished roof, whichever is less, by up to 12 feet; provided, that HVAC equipment and screening and antennas/dishes shall be set back from the roof perimeter a distance equal to the height of these features above the finished roof; and

2. One incidental roof and its supports covering not more than the lesser of 256 square feet or five percent of the total roof area and standing not more than 12 feet high over a single, fully open roof-top patio is permitted; provided, that the roof covering cannot be more than 48 inches high in cross section at any point, the covering structure cannot be more than 20 feet in any dimension, and the roof design must be consistent with the building architecture in material and design. (Ord. 2013-008 § 1 (Exh. A); Ord. 2012-018 § 1 (Exh. A); Ord. 97-019 § 4, Exh. B)

18.56.030 Permitted uses.

The council may permit the following uses in districts from which they are now prohibited by this title:

A. Airport and airfields.

B. Government buildings.

C. Educational institutions.

D. Hospitals and sanitariums (except animal clinics and hospitals.)

E. Nursing homes and boarding homes for the aged.

F. Correctional institutions.

G. Towers and antennas over 100 feet in height, subject to the requirements of SMC 18.61.

H. Essential public facilities and utilities.

I. Parks, playgrounds, recreation or community centers.

J. Group homes, alcoholism or drug treatment centers, detoxification centers, work release facilities for convicts or ex-convicts, or other housing serving as an alternative to incarceration with 12 or more residents.

K. Energy facilities.

L. Hazardous waste treatment and storage facilities.

M. Shelters for the transient or for the homeless.

N. Master planned resorts.

O. Solid waste facilities

P. Sewage treatment facilities.

Q. Bus stations and transit facilities. (Ord. 97-019 § 4, Exh. B)

18.57.020 Downtown zones allowed and prohibited uses.

A. Because these districts are intended to encourage a wide mixture of uses, all uses listed in Chapter 18.20 SMC, except those listed in subsection D of this section, are permitted, subject to the additional use requirements of subsections B and C of this section. Nonetheless, the director of the department of community development retains the authority to determine if any proposed use does not comport with the intent of the district.

B. Conditional uses within the DC, DMU-I, and DMU-II zones include the following:

1. Major. Agricultural processing, light; bars and taverns; communication relay or transmission facilities; construction yards; day care centers (more than 12 charges); recreational vehicle parks, seasonal (up to 180-day stay); recreational vehicle parks, transient (up to 30-day stay); towers, antennas, and supporting structures, including amateur radio, 65 feet or more as set forth in SMC 18.61.

2. Minor. Espresso stands (drive-through).

C. Special uses within the DC, DMU-I, and DMU-II zones include the following: essential public facilities and utilities; group homes (other), 13 or more persons; group homes for the functionally disabled (13 or more persons); parks, playgrounds, golf courses, recreation or community centers; swimming pools, public and private; special needs housing.

D. Prohibited Uses in the Downtown Zones.

1. Uses Prohibited in All Three Districts. Adult entertainment; gasoline stations and car washes; halfway houses and rehabilitation centers; jails and other detention or correction facilities; kennels; manufacturing and fabrication; sales, leasing, servicing, or repair of vehicles, unless entirely within a structure; warehousing, including mini-storage; battery exchange stations; marijuana (recreational or medical use) retail store.

2. Additional Uses Prohibited in the Downtown Core and Mixed Use 1 Districts. Outdoor storage of inventory, materials or supplies, unless behind a building or along an alley.

3. Additional Uses Prohibited in the Downtown Core. Residential use on the ground level (except in rear 40 percent of commercial building or in a rear, secondary building); commercial uses with drive-through

windows or service kiosks. (Ord. 2015-012 § 1 (Exh. A); Ord. 2014-003 § 1 (Exh. A); Ord. 2012-006 § 1 (Exh. A); Ord. 2012-002 § 2 (Exh. B); Ord. 2011-017 § 2; Ord. 2011-016 § 2 (Exh. B))

SECTION 2. That there is adopted a new Chapter SMC 18.61 of the Sequim Municipal Code to read as follows:

Section 18.61.010 Purpose

Section 18.61.020 Additional Definitions

Section 18.61.030 Towers

Section 18.61.040 Collocation of Antennas, DAS, and Small Cells

Section 18.61.050 Tower Sharing, Collocation and Preferred Tower Locations

Section 18.61.060 Application Submittal Requirements

Section 18.61.070 General Development Standards Applicable to WCFs

Section 18.61.080 Regulations for Facilities Subject to a Conditional Use Permit

Section 18.61.090 Exception from Standards

Section 18.61.100 Final Inspection

Section 18.61.110 ~~Maintenance~~ FCC Permit Revocation

Section 18.61.120 Discontinuation of Use

Section 18.61.130 Independent Technical Review

Section 18.61.140 Exempt Facilities

Section 18.61.150 Indemnification

Chapter 18.61

Wireless Communication Facilities

Section 18.61.010 Purpose

The purpose of this Chapter is to regulate the development and operation of wireless communication facilities within the City and accommodate the balanced provision of wireless communication services that meet community's needs while promoting and protecting the public health, safety and welfare, including the community's natural beauty, visual quality and environmental health.

Section 18.61.020 Definitions Specific to Wireless Communication Facilities

In addition to the definitions provided in SMC 18.08, the definitions set forth below shall apply to this Chapter.

Section 18.61.0201

"Antenna" means one or more rods, panels, discs or similar devices used for wireless communication, which may include, but is not limited to, omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).

"Antenna Array" means a single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a

mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

Section 18.61.0202

“Base Station” means a structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cell networks).
3. The term includes any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in this section that has been reviewed and approved under the applicable zoning or siting process, or under Washington or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
4. The term does not include any structure that, at the time the relevant application is filed with Washington or the City under this section, does not support or house equipment described in this section.

Section 18.61.0203

“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.

“Commission” means the Federal Communications Commission (“FCC”).

Section 18.61.0204

“Deemed approved” means and refers to an eligible facilities modification application that has been deemed approved upon the City’s failure to act, and has become effective, as provided pursuant the FCC Eligible Facilities Request Rules.

“Distributed Antenna System” or “DAS” means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

Section 18.61.0205

“Eligible Facilities Request” means 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 collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment.

“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 under this section.

“Existing” means a constructed tower or base station is existing for purposes of this Chapter 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 reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

Section 18.61.0206

“Site” means for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

“Small Cells” mean compact wireless base stations containing their own transceiver equipment and function like cells in a mobile network but provide a smaller coverage area than traditional macrocells. Small cells will meet the two parameters in subsections (a) and (b). For purposes of these definitions, volume is a measure of the exterior displacement, not the interior volume of the enclosures. Antennas or equipment concealed from public view in or behind an otherwise approved structure or concealment are not included in calculating volume.

- (a) Small Cell Antenna: Each antenna shall be no more than three (3) cubic feet in volume.
- (b) Small Cell Equipment: Each equipment enclosure shall be no larger than seventeen (17) cubic feet in volume. Associated conduit, mounting bracket or extension arm, electric meter, concealment, telecommunications demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch may be located outside the primary equipment enclosure(s) and are not included in the calculation of equipment volume.

“Stealth design” means technology that minimizes the visual impact of wireless communications facilities by camouflaging, disguising, screening, and/or blending into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees, flagpoles, bell towers, subject to the requirements of SMC towers, subject to the requirements of SMC 18.61, and architecturally screened roof-mounted antennas.

Section 18.61.0207

“Tower” means any structure built for the sole or primary purpose of supporting any Commission-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.

“Tower Height” means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna.

“Transmission Equipment” means equipment that facilitates transmission for any Commission-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.

Section 18.61.0208

“Utility Support Structure” means utility poles or utility towers, subject to the requirements of SMC towers, subject to the requirements of SMC 18.61 supporting electrical, telephone, cable or other similar facilities; street light standards; pedestrian light standards; traffic light structures; traffic sign structures; or water towers, subject to the requirements of SMC towers, subject to the requirements of SMC 18.61.

18.61.0209

“Wireless Communication Facilities” or “WCF” means a staffed or unstaffed facility or location for the transmission and/or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets.

Section 18.61.030 Towers

A. Towers shall be located only in those areas and pursuant to the process described in SMC Tables 18.61.0301 and 18.61.0302, provided that towers that are proposed to be located in a residential zone or within 150 feet of a residential zone shall be subject to the siting priorities set forth for preferred tower locations in SMC 18.61.050.

Table 18.61.0301
New Wireless Communication Tower Criteria
Allowed by Type A-1 Permit

<u>Zone Category</u>	<u>Located in Public Right-of-way (ROW)</u>	<u>Maximum Tower Height</u>	<u>Stealth Design</u>	<u>Setback from Property Lines (does not apply within ROW)[2]</u>
<u>C-I (NC)</u>	<u>Yes</u>	<u>60'</u>	<u>Optional[1]</u>	<u>N/A</u>
<u>C-II (all), C-III [1]</u>	<u>Yes or No</u>	<u>70'</u>	<u>Optional[1]</u>	<u>20'</u>
<u>DC, DMU-I, DMU-II</u>	<u>Yes or No (allowed in ROW only if less than or equal to 70')</u>	<u>150'</u>	<u>Optional[1]</u>	<u>20'</u>
<u>MU[1]</u>	<u>Yes or No (allowed in ROW only if less than or equal to 70')</u>	<u>150'</u>	<u>Optional[1]</u>	<u>20'</u>

[1] If an applicant wants to construct a tower in a residential zone or within 50' of a residential zone, then a Type III process and stealth design are required. If an applicant wants to construct a tower within 51' -

150' of a residential zone, then a Type II process and stealth design are required. If an applicant wants to construct a tower beyond 150' of a residential zone, then the review process is that which is required in the zone in which the tower is to be located.

[2] See exception for locations adjacent to a residence in SMC 18.61.070(B).

Table SMC 18.61.0302
New Wireless Communication Tower Criteria
Allowed by Type C-2 Conditional Use Permit

<u>Zone Category</u>	<u>Located in Public Right-of-way (ROW)</u>	<u>Maximum Tower Height</u>	<u>Stealth Design</u>	<u>Setback from Property Lines[2] (does not apply within ROW)</u>
<u>R4-8[1]</u>	<u>Yes or No</u>	<u>60'</u>	<u>Required</u>	<u>20'</u>
<u>C-I [1]</u>	<u>Yes or No</u>	<u>61' - 70'[3]</u>	<u>Optional[1]</u>	<u>20'</u>
<u>CB & GC[1]</u>	<u>Yes or No</u>	<u>71' - 90'[4]</u>	<u>Optional[1]</u>	<u>20'</u>

- [1] If an applicant wants to construct a tower in a residential zone or within 50' of a residential zone, then stealth design is required.
- [2] See exceptions for locations adjacent to a residence in SMC 18.61.070(B).
- [3] An additional 20 feet in height is allowed if applicant uses stealth design.
- [4] An additional 30 feet in height is allowed if applicant uses stealth design.

Section 18.61.040 Collocation of Antennas, DAS, and Small Cells

- A. To the extent not otherwise covered by Chapter 18.61A (Eligible Facilities Requests), collocation and new wireless communication antenna arrays are permitted in all zones via administrative approval provided that they are attached to or inside of an existing structure that provides the required clearances for the array's operation without the necessity of constructing a tower or other apparatus to extend the antenna array more than 15 feet above the structure.
- B. Installation requires the granting of development permits prescribed by Chapter 20.01 and Title 15 SMC.
- C. For antenna arrays on City-owned property, the execution of necessary agreements is also required.
- D. If any support structure must be constructed to achieve the needed elevation or if the attachment adds more than 15 feet above the existing structure, the proposal is subject to Type A-1 review. The limitation to 15 feet applies to cumulative increases and any previously approved additions to height made under this section must be included in its measurement.
- E. Any equipment shelter or cabinet and other ancillary equipment are subject to the general development standards of SMC 18.61.070.
- F. Distributed Antenna Systems and Small Cells.
 - 1. Distributed Antenna Systems (DAS) and Small Cells are allowed in all land use zones, regardless of the siting preferences listed in SMC 18.61.050.

2. DAS and small cells are subject to approval via administrative review only if their installation requires the construction of a new utility support structure or building. Type A-1 review is required when the applicant proposes a new utility support structure or building.
3. Multiple Site DAS and Small Cells.
 - a. A single permit may be used for multiple distributed antennas that are part of a larger overall DAS network.
 - b. A single permit may be used for multiple small cells spaced to provide wireless coverage in a contiguous area.

Section 18.61.050 Tower Sharing, Collocation and Preferred Tower Locations

- A. Tower Sharing and Collocation. New WCF facilities must, to the maximum extent feasible, collocate on existing towers or other structures of a similar height to avoid construction of new towers, unless precluded by zoning constraints such as height, structural limitations, inability to obtain authorization by the owner of an alternative location, or where an alternative location will not meet the service coverage objectives of the applicant. Applications for a new tower must address all existing towers or structures of a similar height within 1/2 mile of the proposed site as follows: (a) by providing evidence that a request was made to locate on the existing tower or other structure, with no success; or (b) by showing that locating on the existing tower or other structure is infeasible.
- B. Preferred Tower Locations. All new towers proposed to be located in a residential zone or within 150 feet of a residential zone are permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (8):
 1. City-owned or operated property and facilities, not including right-of-way and right-of-way facilities, that are not in residential zones or located within 150 feet of residential zones;
 2. industrial zones and downtown zones;
 3. City-owned or operated property and facilities in any zone, as long as the tower is inconspicuous from a public street, public open areas, or property that is being used for residential purposes;
 4. Community Business and General Commercial zones (CB & GC);
 5. office and other commercial zones;
 6. other City-owned or operated property and facilities;
 7. parcels of land in residential zones;
 8. sites in residential zones on or within 150 feet of a designated historic structure or district.

The applicant for a tower located in a residential zone or within 150 feet of a residential zone shall address these preferences in an alternative sites analysis meeting the requirements of section 18.61.060 below.

Section 18.61.060 Application Submittal Requirements

In addition to the application materials identified in SMC 20.01.120, Type II and Type III applications submitted under this chapter shall include the following materials.

- A. Requirement for FCC Documentation. The applicant shall provide a copy of:
 - 1. its documentation for FCC license submittal or registration, and
 - 2. the applicant's FCC license or registration.

- B. Site plans. Complete and accurate plans and drawings to scale, prepared, signed and sealed by a Washington-licensed engineer, land surveyor and/or architect, including (1) plan views and all elevations before and after the proposed construction with all height and width measurements called out; (2) a depiction of all proposed transmission equipment; (3) a depiction of all proposed utility runs and points of contact; and (4) a depiction of the leased or licensed area with all rights-of-way and/or easements for access and utilities in plan view.

- C. Visual analysis. A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view.

- D. Statement of Purpose / RF Justification. A clear and complete written Statement of Purpose shall minimally include: (1) a description of the technical objective to be achieved; (2) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and (3) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by a Washington-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.

- E. Design justification. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter. A complete design justification shall identify all applicable design standards under this chapter and provide a factually detailed reason why the proposed design either complies or cannot comply.

- F. Collocation and alternative sites analysis.
 - 1. All Towers. All applications for a new tower will demonstrate that collocation is not feasible, consistent with SMC 18.61.050.
 - 2. Towers in a residential zone or within 150 feet of a residential zone.
 - a. For towers in or within 150 feet of a residential zone, the applicant must address the City's preferred tower locations in SMC 18.61.050 with a detailed explanation justifying why a site of higher priority was not selected. The City's tower location preferences shall be addressed in a clear and complete written

alternative site analysis that shows at least five (5) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate. An applicant may reject an alternative tower site for one or more of the following reasons:

1. preclusion by structural limitations;
2. inability to obtain authorization by the owner;
3. failure to meet the service coverage objectives of the applicant;
4. failure to meet other engineering requirements for such things as location, height and size;
5. zoning constraints, such as the inability to meet setbacks;
6. analysis or documented evidence of physical or environmental constraints, such as unstable soils or wetlands, that qualify sites as unsuitable Critical Areas; and / or
7. being a more intrusive location despite the higher priority in this chapter as determined by the Planning Director or Hearing Examiner, as applicable.

b. A complete alternative sites analysis provided under this subsection (F)(2) may include less than five (5) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least five (5) potentially available, higher ranked, alternative sites.

3. Required description of coverage objectives. For purposes of disqualifying potential collocations and/or alternative sites for the failure to meet the applicant's service coverage objectives, the applicant shall provide (a) a description of its objective, whether it be to close a gap or address a deficiency in coverage, capacity, frequency and/or technology; (b) detailed technical maps or other exhibits with clear and concise RF data to illustrate that the objective is not met if using the alternative (whether it be collocation or a more preferred location); and (c) a written statement based on the site analyses of why the alternative (collocation or a more preferred location) does not meet the objective.

G. DAS and small cells. As identified in SMC 18.61.010, the City encourages but does not require the use of DAS and small cells. Each applicant will submit a statement that explains how it arrived at the structure and design being proposed.

H. Radio frequency emissions compliance report. A written report, prepared, signed and sealed by a Washington-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the exposure limits established by the FCC. The report shall also include a cumulative analysis that accounts for all emissions from all WCFs located on or adjacent to the proposed site, identifies the total exposure

from all facilities and demonstrates planned compliance with all maximum permissible exposure limits established by the FCC. The report shall include a detailed description of all mitigation measures required by the FCC.

I. Noise study. A noise study, prepared, signed and sealed by a Washington-licensed engineer, for the proposed WCF and all associated equipment in accordance with the Sequim Municipal Code.

J. Collocation consent. A written statement, signed by a person with the legal authority to bind the applicant and the property owner, allowing the applicant to collocate on facilities.

K. Collocation engineering requirements. All applications for collocations must include a site determination by an engineer licensed to conduct business within Washington State that the structure is designed to accommodate the additional load. The determination must take into account, at a minimum, all facilities currently located on the roof/structure, the cumulative load after accounting for all existing facilities, and the cumulative load with the proposed facilities, and any required engineering changes to the structure needed to accommodate additional load.

Section 18.61.070 General Development Standards Applicable to WCFs

The following criteria shall be applied in approving, approving with conditions or denying a WCF. Unless otherwise provided in this chapter, WCF construction shall be consistent with the development standards of the zoning district in which it is located.

A. Height. Refer to SMC Tables 18.61.0301 and 18.61.0302.

B. Setback Requirements. Refer to SMC Tables 18.61.0301 and .0302 for towers. All equipment shelters, cabinets or other on-the-ground ancillary equipment shall be buried or meet the setback requirement of the zone in which located. Notwithstanding the setbacks provided for in Tables 18.61.0301 and .0302, when a residence is located on an adjacent parcel, the minimum side setback from the lot line for a new tower must be equal to 110 percent of the height of the proposed antenna support structure, unless the following are met:

1. The tower is constructed with breakpoint design technology. If the tower has been constructed using breakpoint design technology, the minimum setback distance shall be equal to 110 percent (110%) of the distance from the top of the structure to the breakpoint level of the structure, or the applicable zone's minimum side setback requirements, whichever is greater. (For example, on a 100-foot tall monopole with a breakpoint at eighty [80] feet, the minimum setback distance would be twenty-two [22] feet [110 percent of twenty (20) feet, the distance from the top of the monopole to the breakpoint] or the minimum side yard setback requirements for that zone, whichever is greater.)
2. The issuance of building permits for the tower shall be conditioned upon approval of the tower design by a structural engineer.

C. Landscaping. All landscaping shall be installed and maintained in accordance with this chapter. Existing on-site vegetation shall be preserved and/or improved, and disturbance of the existing topography shall be minimized. The director may grant a minor deviation from the required landscaping based on written findings and conclusions that a different design better serves the intent of this chapter.

1. Tower bases, when fenced (compounds), or large equipment shelters (greater than three feet by three feet by three feet), shall be landscaped following the provisions of this section. In all R zones, all C zones (including HC and RC), Downtown zones, and all other non-residential zones, landscaping shall consist of a six-foot wide strip of landscaping as described in SMC 18.24.130. Street Frontage and perimeter property landscaping where required shall follow these standards:

a. The six-foot wide strip of plantings shall provide a continuous three- to four-foot tall screen (the plants shall be evergreen when adjacent to parking areas in order to block headlights), while maintaining buffered views into and out of the site. Shrubs of a species that will achieve a minimum approximate height of three feet and maximum approximate height of four feet shall be included for the entire length of the planting area. Groundcovers shall be included as necessary to fill in the width of the planting area. Trees shall cover the length of the planting strip and be spaced at intervals resulting in touching of branches after ten years of normal growth.

2. If fencing is installed, it shall meet the standards of SMC 18.24.140.

3. Applicant shall ensure the full establishment of plantings for two years.

4. Landscaping and buffering requires Landscape design plans shall incorporate a mix of indigenous and native plants that are hardy and drought-tolerant, and shall include a minimum of 40 percent evergreen plantings (trees, shrubs, groundcovers, ornamental grasses, and evergreen herbs). Permanently installed irrigation systems are required.

6. Minimum planting specifications are:

<u>CATEGORY</u>	<u>SPECIFICATIONS</u>
<u>Deciduous shade trees</u>	<u>2½ to 3 inch caliper measured 6 inches above ground</u>
<u>Evergreen trees</u>	<u>6 to 8 feet in height</u>
<u>Small deciduous or ornamental trees</u>	<u>1 to 1½ inch caliper measured 6 inches above ground</u>
<u>Multi-trunk clusters (3 or more trunks)</u>	<u>the smallest trunk shall be ¾ inch</u>
<u>Deciduous and Evergreen Shrubs</u>	<u>24 inch high plant size. Spacing from 3 to 5 feet apart depending upon species</u>

7. The developer, its successor and/or subsequent owners and their agents, shall maintain landscaping on the property on a continuing basis for the life of the development.

8. The property owner shall maintain landscape areas in good condition and in a way that presents a healthy, neat and orderly appearance. This maintenance shall include weeding, watering, fertilizing, pruning, mowing, edging, mulching or other maintenance, in accordance with acceptable horticultural practices. Plant materials which exhibit evidence of insect pests, disease and/or damage shall be appropriately treated. Dead plants shall be promptly removed and replaced within the next planting season after installation.

D. Visual Impact. All WCFs in residential zones and within 150 feet of residential zones, including equipment enclosures, shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public, consistent with the proper functioning of the

WCF. Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings; be compatible with the urban, built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture; and / or be consistent with other uses and improvements permitted in the relevant zone.

- E. Use of Stealth Design/Technology. The applicant shall make an affirmative showing as to why they are not employing stealth technology. More specifically:
1. Stealth design is required in residential zones and to the extent shown in Tables A-1 and A-2. Stealth and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive. Stealth design that relies on screening wireless communications facilities in order to reduce visual impact must screen all substantial portions of the facility from view. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind that are not native to the Pacific Northwest.
- F. Lighting. For new wireless communication support towers, only such lighting as is necessary to satisfy FAA requirements is permitted. All FAA-required lighting shall use lights that are designed to minimize downward illumination. Security lighting for the equipment shelters or cabinets and other on-the-ground ancillary equipment is also permitted as long as it complies with SMC 18.24.170 to keep light within the boundaries of the site.
- G. Noise. At no time shall transmission equipment or any other associated equipment (including, but not limited to, heating and air conditioning units) at any wireless communication facility emit noise that exceeds the applicable limit(s) established in Washington Administrative Code 173-60-040 as currently enacted and as may be amended.
- H. Signage. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted/required by the City.
- I. Code compliance. All facilities shall at all times comply with all applicable federal, State and local building codes, electrical codes, fire codes and any other code related to public health and safety.
- J. Building-mounted WCFs.
1. In residential zones, all transmission equipment shall be concealed within existing architectural features. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.
 2. In residential zones, all roof-mounted transmission equipment shall be set back from all roof edges to preclude visibility from public streets and ground elevation of adjacent properties.

3. In all other zones, antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting and/or host structure.

K. WCFs in the public rights-of-way.

1. *Preferred locations.* Facilities shall be located as far from residential uses as feasible, and on main corridors and arterials to the extent feasible. Facilities in the rights-of-way shall maintain at least a two hundred (200) foot separation from other wireless facilities (except with respect to DAS or Small Cells), except when collocated or on opposite sides of the same street.
2. *Pole-mounted or tower-mounted equipment.* All pole-mounted and tower-mounted transmission equipment shall be mounted as close as possible to the pole or tower so as to minimize the overall visual profile to surrounding streets and properties. All pole-mounted and tower-mounted transmission equipment shall be painted with flat, non-reflective colors that blend with the visual environment.
3. For all WCFs to be located within the right-of-way, prior to submitting for a building permit, the applicant must have a valid municipal franchise or exemption otherwise granted by applicable law, to the extent consistent with RCW 35.21.860.

L. Accessory Equipment. In residential zones, all equipment shall be located or placed in an existing building, underground, or in an equipment shelter that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) located so as to be minimize obtrusiveness while maintaining proper functioning of the WCF.

M. Spacing of Towers. Towers shall maintain a minimum spacing of one-half mile, unless it is proven that physical limitations (such as topography, terrain, tree cover or location of buildings) in the immediate service area prohibit adequate service by the existing facilities or that collocation is not feasible under SMC 18.61.050.

N. Site Design Flexibility. Individual WCF sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the WCF and supporting equipment may be installed so as to best camouflage, disguise, or conceal them to make the WCF more compatible with and blend into the setting and/or host structure, upon approval by the Planning Director or the Hearing Examiner. The design flexibility allowed under this subsection includes additional height for a tower located within tall trees on (i) City property or (ii) other parcels at least 5 acres in size, so that the impact of the tower may be minimized by the trees while still allowing for the minimum clearance needed for the tower to achieve the applicant's coverage objectives. A formal exception from standards under SMC 18.61.090 is not required for proposals meeting this subsection by being a less intrusive design option.

O. Structural Assessment. The owner of a proposed tower shall have a structural assessment of the tower conducted by a professional engineer, licensed in the State of Washington, which shall be submitted with the application for a building permit.

Section 18.61.080 Regulations for Facilities Subject to a Conditional Use Permit

A. Approval criteria. In addition to the development standards in this chapter and the approval criteria in SMC 20.01.170, the following additional approval criteria apply:

1. The need for the proposed tower shall be demonstrated if it is to be located in a residential zone or within one hundred fifty feet of an existing residential lot. An evaluation of the operational needs of the wireless communications provider, alternative sites, alternative existing facilities upon which the proposed antenna array might be located, and collocation opportunities on existing support towers within one-half mile of the proposed site shall be provided. Evidence shall demonstrate that no practical alternative is reasonably available to the applicant.
2. The proposed tower satisfies all of the provisions and requirements of this chapter 18.61.

B. Public Notice. In addition to the notice requirements of SMC 20.01.140, for proposals in residential zones and within 150 feet of a residential zone public notice shall include:

1. A black and white architectural elevation and color photo simulation rendering of the proposed WCF.
2. The sign required by SMC 20.01.140 shall include that same architectural elevation and color photo simulation combination selected by the City that depicts the visual impact of the WCF.

Section 18.61.090 Exception from Standards

A. Applicability. Except as otherwise provided in this chapter (under Site Design Flexibility), no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this Section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance and design deviation provisions in SMC Title 18, provided this section does not provide an exception from this chapter's visual impact and stealth design requirements or the approval criteria set forth in Section 18.61.080.

B. Procedure Type. A wireless communications facility exception is a Type C-2 procedure.

C. Submittal Requirements. In addition to the general submittal requirements for a Type C-2 application, an application for a wireless communication facility exception shall include:

1. A written statement demonstrating how the exception would meet the criteria.
2. A site plan that includes:
 - a. Description of the proposed facility's design and dimensions, as it would appear with and without the exception.
 - b. Elevations showing all components of the wireless communication facility as it would appear with and without the exception.

c. Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.

D. Criteria. An application for a wireless communication facility exception shall be granted if the following criteria are met:

1. The exception is consistent with the purpose of the development standard for which the exception is sought.

2. Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.

3. The applicant demonstrates the following:

a. A significant gap in the coverage, capacity, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;

b. The gap can only be filled through an exception to one or more of the standards in this chapter; and

c. The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this chapter's standards to the greatest extent possible.

4. Exceptions in Residential Zones. For a new tower proposed to be located in a residential zone or within 150 feet of a residential zone, unless the proposal qualifies as a preferred location on City-owned or operated property or facilities under SMC 18.61.050(B)(3), the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive on the values that this chapter seeks to protect.

Section 18.61.100 Final Inspection

A. A Certificate of Occupancy will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations. WCFs may not become operational until a Certificate of Occupancy has been granted.

B. Failure to Comply. If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant immediately shall make any and all such changes required to bring the WCF installation into compliance.

Section 18.61.110 ~~Maintenance~~FCC Permit Revocation

~~A. All wireless communication facilities must comply with all standards and regulations of the FCC and any other State or federal government agency with the authority to regulate wireless communication facilities.~~

~~B. The site and the wireless communication facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.~~

~~C. All graffiti on wireless communication facilities must be removed at the sole expense of the permittee after notification by the City to the owner / operator of the WCF as provided in SMC 8.07.050.~~

~~D. If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.~~

Section 18.61.120 Discontinuation of Use

~~A. Any wireless communication facility that is no longer needed and its use is discontinued shall be reported immediately by the service provider to the planning director. Discontinued facilities shall be completely removed within six months and the site restored to its pre-existing condition.~~

~~B. There shall also be a rebuttable presumption that any WCF that is regulated by this chapter and that is not operated for a period of six (6) months shall be considered abandoned. This presumption may be rebutted by a showing that such WCF is an auxiliary back-up or emergency utility or device not subject to regular use or that the WCF is otherwise not abandoned. For those WCFs deemed abandoned, all equipment, including, but not limited to, antennas, poles, towers, and equipment shelters associated with the WCF shall be removed within six (6) months of the cessation of operation. Irrespective of any agreement among them to the contrary, the owner or operator of such unused facility, or the owner of a building or land upon which the WCF is located, shall be jointly and severally responsible for the removal of abandoned WCFs. If the WCF is not thereafter removed within ninety (90) days of written notice from the City, the City may remove the WCF at the owner of the property's expense or at the owner of the WCF's expense, including all costs and attorneys' fees. If there are two or more wireless communications providers collocated on a single support structure, this provision shall not become effective until all providers cease using the WCF for a continuous period of six (6) months.~~

Section 18.61.130 Independent Technical Review

~~Although the City intends for City staff to review administrative matters to the extent feasible, the City may retain the services of an independent, radio frequency technical expert of its choice to provide technical evaluation of permit applications for WCFs, including administrative and conditional use permits. The technical expert review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed WCF complies with the applicable approval criteria set forth in this chapter. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the City, paid within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs~~

and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued.

Section 18.61.140 Exempt Facilities

The following are exempt from this chapter:

- A. FCC licensed amateur (ham) radio facilities;
- B. Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;
- C. A government-owned WCF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City; except that such facility must comply with all federal and state requirements. The WCF shall be exempt from the provisions of this chapter for up to one week after the duration of the state of emergency; and
- D. A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to approval by the City. The WCF shall be exempt from the provisions of this chapter for up to one week before and after the duration of the special event.
- E. In locations more than 150 feet from a residential zone, other temporary, commercial WCFs installed for a period of 90 days, subject to renewals at the City's discretion; provided, that such temporary WCF will comply with applicable setbacks and height requirements.
- F. Eligible Facilities Requests permitted under Chapter SMC 18.61A.

Section 18.61.150 Indemnification

Each permit issued shall have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damage, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF on City property or in the public right-of-way.

SECTION 3. That there is adopted a new Chapter SMC 18.61A of the Sequim Municipal Code to read as follows:

Section 18.61A Eligible Facilities Modifications

18.61A.010 Adoption of Findings and Conclusions

18.61A.020 Definitions

18.61A.030 Applicability – Relationship to Other Rules and Regulations

18.61A.040 Permit Classification

18.61A.050 Submittal Requirements

18.61A.060 Application Review

18.61A.070 Non-Conforming Structure – Termination

18.61A.080 Enforcement; Violation

18.61A.010 Adoption of Findings and Conclusions. The recitals set forth in the ordinance adopting this code are adopted as findings and conclusions of the City Council.

18.61A.020 Definitions

Definitions applicable to this Chapter are included in SMC 18.61.

18.61A.030 Applicability - Relationship to other Rules and Regulations.

- A. Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and not withstanding any other provisions in the City Code, the provisions of this chapter shall be the sole and exclusive procedure for review and approval of a proposed facilities modification which the applicant asserts is subject to review under Section 6409 of the Spectrum Act. To the extent that other provisions of the City Code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this chapter shall control. In the event that any part of an application for project permit approval includes a proposed facilities modification, the proposed facilities modification portion of the application shall be reviewed under the provisions of this chapter. In the event that an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be subject to review under this Chapter and may be subject to review under other applicable provisions of the City Code.
- B. Non-conforming Structures. This chapter shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming, or legal nonconforming, structure at the time a competed eligible facilities modification application is filed with the City. To the extent that the non-conforming structures and use provisions of the City code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this chapter and shall not apply.
- C. Replacement of Eligible Support Structure. This chapter shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of the tower or base station.
- D. First Deployment; Base Station. This chapter shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within or upon, or attached to, the structure.
- E. Interpretation. Interpretations of this Chapter shall be guided by Section 6409 of the Spectrum Act; the FCC Eligible Facilities Request Rules, the FCC's Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153; and other applicable laws, regulations, and associated guidance.
- F. SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible facilities modification application are not subject to, and are exempt from, the requirements of RCW 43.21C.030(2)(c), if:

 - 1. The proposed facilities modification would not increase the height of the eligible support structure by more than ten percent, or twenty feet, whichever is greater; or
 - 2. The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the structure more than

twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater;* or

3. The authority to condition or deny an application pursuant to Chapter 43.21 RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.

*Note: See, RCW 43.21C.0384 and WAC 197-11-800(25)

G. Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the City's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

18.61A.040 Permit Classification. An eligible facilities modification permit shall be classified as an administrative permit subject to review and approval or denial by the approval authority.

18.61A.050 Submittal Requirements. The purpose of the submittal requirements is to ensure that the City has all information and documentation that is reasonable necessary to determine if the applicant's proposed facilities modification will substantially change the physical dimensions of an eligible support structure. The submittal requirements are not intended to require the applicant to establish the need for the proposed modifications or to justify the business decision to propose such modifications. No eligible facilities modification application shall be deemed complete unless it is, in writing, accompanied by the applicable application and review fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant, certifying the truth and accuracy of the information provided in the application. The application shall include the following submittals, unless waived by the approval authority:

1. The following contact information for the Authorized Person:

- a. Name;
- b. Title;
- c. Mailing Address;
- d. Phone Number; and
- f. Electronic Mail Address (Optional).

2. The legal and dba names, mailing address, Washington tax number, and contact phone number(s) of Applicant.

3. If a corporation, the name and address of the registered agent of Applicant in the Washington State, and the state of incorporation of Applicant.

4. If Applicant is an entity, other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.

5. An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act.

6. If the applicant is not the owner or person in control of the eligible support structure and/or site, the following shall be required:

An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facilities modification. If the eligible support structure is located in a public right of way, the applicant must also attest that applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right of way.

7. If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required:

- a. Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.

b. For collocations, proof of current compliance with the FCC's RF emissions standards before the collocation and written documentation signed under penalty of perjury under the laws of the State of Washington that the proposed collocation will still fall within the FCC's RF emissions standards after collocation. For purposes of this section, "current compliance" means documentation within one calendar year of the date of submittal.

Such documentation must include a copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination Of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

c. All applications for collocations must include a site determination by an engineer licensed to conduct business within Washington State that the structure is designed to accommodate the additional load. The determination must take into account, at a minimum, all facilities currently located on the roof/structure, the cumulative load after accounting for all existing facilities, and the cumulative load with the proposed facilities, and any required engineering changes to the structure needed to accommodate additional load.

8. If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the City or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater.

9. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the City Code, or an ordinance or a municipal code of another local government authority, the following shall be required:

A copy of the document (e.g., CUP or SUP) setting forth such pre-existing restrictions or requirements together with a certification that the proposed facilities modification conforms to such restrictions or requirements; provided that, such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure.

10. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required:

Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

11. If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

12. If the applicant proposes a modification to an eligible support structure that will (a) include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required:

A description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation and dimensions of the new or replacement transmission equipment. The city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.

13. If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the following shall be required:

A technical report by a qualified engineer accredited by the state of Washington demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed collocation, removal, or replacement of transmission equipment and conforms to applicable code requirements. The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of necessity.

14. If the applicant proposes a modification to a tower, the following shall be required:

A stamped report by a state of Washington registered professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation, EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:

- a. The number and type of antennas that can be accommodated;
- b. The basis for the calculation of capacity; and
- c. A written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standards. The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

15. If the applicant proposes a modification to a base station, the following shall be required:

A stamped report by a state of Washington registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes.

16. If the applicant proposes a modification requiring, alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required:

A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting,

- (a) the location, elevation and dimensions of the existing eligible support structure,
- (b) the location, elevation and dimensions of the existing transmission equipment, (c) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment,
- (d) the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each,

- (e) any proposed modification to the eligible support structure,
- (f) the location of existing structures on the site, including fencing, screening, trees, and other significant site features, and
- (g) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

17. Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Section 1.1307, as amended, or, in the event that an FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment.

C. Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the substantial change criteria. A waiver, to be effective, must be in writing and signed by the approval authority.

D. When Received. An eligible facilities modification application, and any supplemental submittals, shall be deemed received by the City upon the date such application, or supplemental submittal, is filed with the [redacted]. An application, and any supplemental submittals, must be filed in person during regular business hours of the City and must be accompanied by the applicable permit review fee(s). Any application received by the City without contemporaneous payment or prior deposit of the applicable permit review fees will be rejected.

18.61A.060 Application Review

1. Review. The approval authority shall review an eligible facilities modification application to determine if the proposed facilities modification is subject to this chapter, and if so, if the proposed facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.
2. Application. The department shall prepare and make publicly available an application form which shall be limited to the information necessary for the department 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.
3. Modification of Application. In the event that after submittal of the application, or as a result of any subsequent submittals, applicant modifies the proposed facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
4. Approval; Denial.
 - a. An eligible facilities application shall be approved, and an eligible facilities permit issued, upon determination by the approval authority that the proposed facilities modification is subject to this chapter and that it does not substantially change the physical dimensions of an eligible support structure.
 - b. An eligible facilities application shall be denied upon determination by the approval authority that the proposed facilities modification is not subject to this chapter or will substantially change the physical dimensions of an eligible support structure. A denial of an eligible facilities modification application shall set forth in writing the reasons for the

denial and shall be provided to the applicant. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the substantial change criteria.

5. Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the department shall review such application to determine whether the application so qualifies.

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

For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty 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 feet;

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

It entails any excavation or deployment outside the current site;

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

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 in paragraphs (g)(i)-(g)(iv) of this section.

For purposes of this section, 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. 47 CFR § 1.40001(b)(7)(i)(A).

6. Timeframe for Review. Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, the department shall approve the application unless it determines that the application is not covered by this Chapter.
7. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by the department and the applicant, or in cases where the department determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications. To toll the timeframe for review, the department must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the department's notice of incompleteness.
8. Following a supplemental submission, the department will notify the applicant within 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 paragraph (d) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
9. Interaction with Section 332(c)(7). If the department determines that the applicant's request is not covered by Section 6409(a) as delineated under this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the department's decision that the application is not a covered request. To the extent such information is necessary, the department may request additional information from the applicant to evaluate the application under Section 332(c)(7), pursuant to the limitations applicable to other Section 332(c)(7) reviews.
10. Failure to Act. In the event the department fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed granted status does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
11. Deemed Approved Application. An application that has been deemed approved shall be and constitute the equivalent of an eligible facilities modification permit, except as may be otherwise determined by a court of competent jurisdiction, and shall be subject to generally applicable enforcement and compliance requirements in the same manner as an eligible facilities modification permit issued pursuant to this chapter.
12. Code Requirements. Any eligible facilities modification permit issued pursuant to this chapter, and any application that has been deemed approved, shall be and is conditioned upon compliance with any generally applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and safety. Violation of any such applicable code or standard shall be deemed to be a violation of the eligible facilities modification or deemed approved application.
13. Term of Eligible Facilities Modification Permit. An eligible facilities modification permit issued pursuant to this chapter, and any deemed approved application, shall be valid for a term of 180 days from the date of issuance, or the date the application is deemed approved.

H. Remedies. Notwithstanding any other provisions in the City code, no administrative review is provided for review of a decision to condition, deny or approve an application. Applicant and the City retain any and all remedies that are available at law or inequity, including by way of example and not limitation, those remedies set forth in the FCC Eligible Facilities Request Rules and remedies available under the Land Use Petition Act. In the event no other time period is provided at law for bringing an action for a remedy, any action challenging a denial of an application or notice of a deemed approved remedy, shall be brought within thirty (30) days following the date of denial or following the date of notification of the deemed approved remedy.*

*Note: The FCC Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, Par's 234 – 236, provides that the City shall have 30 days from the date of notification by the applicant of a deemed granted remedy to bring a legal action in a court of competent jurisdiction to challenge the deemed granted remedy, and that the applicant shall have 30 days from the date of denial to bring a legal action in a court of competent challenging a denial of the application.

18.61A.070 Non-Conforming Structure; Termination.

1. Application. The provisions of this section XMC XX.XX.100 shall apply to any facilities modification constructed, installed, placed or erected pursuant to an eligible facilities modification permit, or pursuant to a deemed approved remedy, which facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed eligible facilities modification application was filed.

2. Non-Conforming Structure Determination. A facilities modification to which this section applies is subject to termination as a non-conforming structure upon the following conditions:

a. Final, Non-Appealable Decision. An appellate court, in a final and nonappealable decision, determines that § 6409(a)(1) of the Spectrum Act is unconstitutional or otherwise determined to be invalid or unenforceable; and

b. Notice of Non-Conforming Structure Determination. The City provides written notice to the applicant that the City has determined that the facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed eligible facilities modification application was filed and that the facilities modification constitutes a non-conforming structure pursuant to the provisions hereof and must be made conforming or the facilities modification terminated.

3. Conformance; Termination. Upon receipt of notice of the City's non-conforming structure determination, applicant shall abate the non-conformance by either, conforming the site to the zoning and development regulations in effect at the time the completed eligible facilities modification application was filed, or removing the facilities modification and returning the site to the condition that existed prior to the construction, installation, placement or erection of the facilities modification. The time period for conformance shall be one (1) year from the date of the City's notice of the non-conforming structure determination.

4. Health and Safety Codes. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

5. Administrative Appeal. The applicant, or its successors or assigns, may appeal the City's determination of non-conformance to the **City Hearing Examiner** by filing a notice of appeal within _____ () calendar days of the date of the determination of nonconformance, excluding holidays.

18.61A.080 Enforcement; Violation.

Compliance with the provisions of this chapter is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions set forth at XXX of the City Code.