



CITY OF

**SEQUIM**

DEPARTMENT OF COMMUNITY DEVELOPMENT

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**SEQUIM PLANNING COMMISSION**

**Regular Meeting / Public Meeting**

**Civic Center**

**152 West Cedar Street**

**Sequim, WA 98382**

**6:00 P.M.**

**Tuesday, September 20, 2016**

**Agenda**

- 1. CALL TO ORDER, PLEDGE OF ALLEGIANCE & ROLL CALL:**  
PC: Mahalick, Protze, Wiseman, Wendt, Janisse.
- 2. APPROVAL OF MINUTES:** None
- 3. ITEMS FROM THE PUBLIC NOT ALREADY ON THE AGENDA**
- 4. PUBLIC MEETING:**
  - a. Ordinance 2016-10 Amending Title 17 for Plat Vacations/Alterations
- 5. NEW BUSINESS**
- 6. UNFINISHED BUSINESS**
  - a. Ordinance 2016-15 Wireless Communications Facilities
- 7. DIRECTOR'S REPORT**
  - a. Zoning Code Status
  - b. Information from Planner's Conference in Clelan
- 8. GOOD OF THE ORDER**
- 9. ADJOURNMENT**

**Next Meeting: October 4, 2016**

## SEQUIM CITY PLANNING COMMISSION AGENDA COVER SHEET

**MEETING DATE:** September 20, 2016

**FROM:** Kristina Nelson-Gross, City Attorney; Chris Hugo, Planning Director

**SUBJECT/ISSUE:** Ordinance 2016-10 Amending Title 17 for Plat Vacations/Alterations

Discussion dates				
<b>CATEGORY</b>				Time Needed for Presentation
<input checked="" type="checkbox"/> Public Meeting <input type="checkbox"/> Unfinished Business <input type="checkbox"/> New Business				15 minutes

**PROBLEM/ISSUE STATEMENT:** The City’s ordinances regarding final plat and binding site plan alterations are not user-friendly for staff or the public. Processes for final plat and binding site plan vacations are not addressed in our code at all.

**LIST OF ATTACHMENTS:**

1. Draft Ordinance 2016-10

**DISCUSSION/ANALYSIS:**

Current municipal code provisions governing the plat alteration and vacation process need to be revised to better inform staff and the public as to the City’s requirements. The existing provision covering alteration of final plats is SMC 17.21.060, which is set forth below. This provision merely references the controlling statutes (RCW 57.18.215, etc.), which have some areas of discretion for local governments. Our code does not make clear what is required.

17.21.060 Alteration of final plats.

When any person is interested in the alteration of any subdivision within the city or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to the city of Sequim planning department.

The application shall be in conformance with requirements established in RCW 58.17.215, 58.17.217, 58.17.218, 58.17.225 and 58.17.275.

The existing provision covering alteration of binding site plans is SMC 17.24.170, which is also set forth below.

17.24.170 Amendment.

An approved binding site plan may be amended upon application to the planning director. The applicant must make the request to amend the binding site plan in writing. The planning director shall approve the amendment if it meets all of the following criteria:

- A. No new building pads are proposed;
- B. No building shall be greater than 10 percent larger than shown on the final binding site plan; and
- C. The amendment would not result in increased amounts of traffic, nor propose circulation patterns which are different than those proposed by the original application, nor significantly increase or cause unanticipated environmental impacts.

All amended site plans shall meet the requirements associated with a final site plan as described in SMC 17.24.120. All amendments shall be numbered successively (i.e., first amendment to the binding site plan).

If the proposed amendment does not meet the above referenced criteria, a new binding site plan application shall be required.

Staff proposes repealing those code provisions and adopting a new chapter, SMC 17.25, to cover plat and binding site plan alterations and vacations. This would provide better guidance to staff and the public about the process involved with this quasi-judicial function.

**RECOMMENDATION:** Set a public meeting for October 4<sup>th</sup>, 2016, at which time staff will be looking for a recommendation from the Commission for adoption by the City Council.

**MOTION:** I move to schedule a public meeting for October 4<sup>th</sup>, 2016<sup>th</sup> on the proposed repeal of sections SMC 17.21.060 and 17.24.170, and adopting a new chapter SMC 17.25 regarding vacation and alteration of binding site plans and subdivisions.

## EXHIBIT A

### Vacation and Alteration of Final Plats.

#### Sections:

- 17.25.010 Purpose/Conflicts.**
- 17.25.020 Administration.**
- 17.25.030 Procedure.**
- 17.25.040 Requirements for a Complete Application.**
- 17.25.050 Criteria for Approval.**
- 17.25.060 Time Limitation for Final Decision.**
- 17.25.070 Recording.**

#### **17.25.010 Purpose.**

A. The purpose of this chapter is to regulate and allow vacation or alteration of approved final plats and approved binding site plans. It does not allow modification or revision of preliminary plats or preliminary binding site plans. The procedure for vacation of plats does not apply to the vacation or alteration of any plat of state-granted tide or shore lands.

B. When the vacation application is specifically for a city street, the procedures for street vacations in RCW 35.79 RCW shall be utilized for the street vacation. When the application is for the vacation of the plat or binding site plan together with the roads/streets, the procedure for vacation in this chapter shall be used, but vacations of streets subject to RCW 35.79.035 may not be made under this procedure.

C. Nothing in this Chapter is intended to conflict with Washington State law, RCW 58.17 as now enacted or hereafter amended. If any portion of this Chapter conflicts with state law, state law shall control.

**17.25.020 Administration.** The Director is authorized and directed to administer the provisions of this chapter. The authority to approve, approve with conditions or deny proposed plat and binding site plan vacations or alterations is granted to the City Council after a public hearing.

**17.25.030 Procedure.** The following steps shall be followed in the processing of vacation or alteration applications.

- A. 20.01.130 Submission and acceptance of application – Determination of completeness, Additional information and project revisions;
- B 20.01.140 Application review – Notice of application – Referrals;
- C. Title 16 Environment;
- D. 20.01.140 Application review – Notice of application – Referrals.

- See 10. and, 20.01.170 Application review – Scope of review;
- E. 20.01.190 Notice of Public Hearing (*see also*, additional public hearing notice below);
- F. 20.01.100 Type B and Type C-1 and C-2 procedures – Quasi-judicial decisions – Process overview;
- G. 20.01.200 Procedures for public hearings;
- H. 20.01.230 Final decision; and
- I. 20.01.240 Appeals

**Additional Notice of Public Hearing.** In addition to the notice provided above, the City shall provide notice of an application for vacation or alteration to all owners of property within the subdivision (excluding the owners of property submitting the application), and as provided for in RCW 58.17.080 and 58.17.090. The notice shall establish the date of the public hearing.

**17.25.040 Requirements for a Complete Application.** The following materials shall be submitted to the City for a complete application:

- A. Vacation Application:
  1. Date, name, address and telephone number of the applicant and/or property owner;
  2. The reason(s) for the proposed vacation;
  3. Signatures of all parties having an ownership interest in the subdivision or that portion of the subdivision proposed to be vacated;
  4. If the subdivision or binding site plan is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for the vacation would result in the violation of a covenant, the application shall include an agreement signed by all parties subject to the covenants, which provides that the parties agree to terminate or alter the restrictive covenants to accomplish the purpose of the vacation of the subdivision or portion thereof;
  5. Acknowledgement that if any street is included in the application for a vacation, that the applicant shall be required to pay the amount contemplated in RCW 35.79.030, if the vacation is granted;
  6. A copy of the approved plat or binding site plan sought to be vacated, together with all plat or binding site plan amendments recorded since the date of the original approval;
  7. A recent title report for each property affected by the vacation, confirming that the title of the lands as described and shown in the proposed vacation area is in the name of the owner(s) signing the application; and
  8. If the vacation is for a portion of the subdivision or binding site plan, the applicant must demonstrate that the partial vacation will not violate the terms of subdivision or binding site plan approval or this Chapter.
  9. Electronic version of all submittal documents on optical disc, flash drive or downloadable from ftp site, in either Adobe PDF or Microsoft Word format.

10. An application fee.

B. Alteration Application.

1. Date, name, address and telephone number of the applicant and/or property owner;

2. The reason(s) for the proposed alteration;

3. Signatures of the majority of those persons having an ownership interest in the lots, tracts, parcels, sites or divisions in the subdivision proposed to be altered;

4. If the subdivision or binding site plan is subject to restrictive covenants which were filed at the time of the approval of the subdivision or binding site plan, and the application for the alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants, providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or binding site plan;

5. A copy of the proposed plat sought to be altered, together with all plat amendments recorded; and

6. A recent title report for each property affected by the vacation, confirming that the title of the lands as described and shown in the proposed vacation area is in the name of the owner(s) signing the application.

7. If the alteration is for a portion of the subdivision or binding site plan, the applicant must demonstrate that the alteration will not violate the terms of subdivision or binding site plan approval or this Chapter

8. Electronic version of all submittal documents on optical disc, flash drive or downloadable from ftp site, in either Adobe PDF or Microsoft Word format.

9. An application fee.

**17.25.050 Criteria for Approval.**

A. Vacation Criteria.

1. *Vacation.* The plat or binding site plan vacation may be approved, approved with conditions or denied after a written determination, with findings and conclusions, is made whether the public use and interest will be served by the vacation. If any portion of the land contained in the subdivision or binding site plan was dedicated to the public for public use and benefit, such land, if not already deeded to the City, shall be deeded to the City as a condition of approval, unless the City decision-maker shall make findings that the public use would not be served in retaining title to those lands. Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat, binding site plan or other document creating the dedicated easement provides or an alternative method or methods to extinguish or alter the easement.

2. *Street Vacation.* When the vacation application is specifically for vacation of a City street, the City's street vacation procedures (and/or the procedures in

chapter 35.79 RCW) shall be utilized. When the procedure is for the vacation of a plat or binding site plan together with the streets, the vacation procedure in this chapter shall be used, but vacation of streets may not be made that are prohibited under RCW 35.79.035 or the City's street vacation ordinance.

3. *Title to Vacated Property.* Title to the vacated property shall vest with the rightful owner as shown on the county records. If the vacated land is land that was dedicated to the public, for public use other than a road or street, and the legislative authority has found that retaining title to the land is not in the public interest, title thereto shall vest with the person(s) owning the property on each side thereof, as determined by the legislative authority. When the road or street that is to be vacated with contained wholly within the subdivision or binding site plan and is part of the boundary of the subdivision or binding site plan, title to the vacated road or street shall vest with the owner(s) of property contained within the vacated subdivision or binding site plan.

B. *Alteration Criteria.* The alteration may be approved, approved with conditions or denied after a written determination, with findings and conclusions, is made whether the public use and interest will be served by the alteration. If any land within the alteration area is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

**17.25.060 Time Limitation for Final Decision.** A vacation or alteration application shall be approved, approved with conditions or denied within one hundred-twenty (120) days after a complete application has been submitted, unless the applicant consents in writing to an extension of such time period.

**17.25.070 Recording.** After approval of the alteration or vacation, the City shall order the applicant to produce a revised drawing of the approved alteration or vacation of the short plat, final plat or binding site plan. The Council shall authorize the Mayor to sign the approved short plat or final plat, and then the City shall file it with the County auditor at the applicant's cost, to become the lawful plat of the property (or to vacate the previously approved plat). The Director shall sign the approved binding site plan and arrange for filing with the county auditor at the applicant's cost.

**SEQUIM CITY PLANNING COMMISSION  
AGENDA COVER SHEET**

**MEETING DATE:** September 20, 2016

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

**SUBJECT/ISSUE:** Ordinance 2016-15 Wireless Communications Facilities (WCFs)

Discussion dates	August 16, 2016	September 6, 2016		
<b>CATEGORY</b>				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 Ordinance 2016-15 Wireless Communications Facilities

**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.

At the September 6, 2016 meeting, the Commission asked staff for additional time to review the options available, such as whether it was preferable to have more, smaller facilities (DAS), or fewer, larger facilities (monopoles/towers). The Commission also asked staff to determine whether requiring stealth technology throughout the City was legally defensible. Staff have reviewed a variety of ordinances from other jurisdictions and the vast majority of those ordinance do not have similar requirements. Those that do require stealth throughout, tend to be much smaller jurisdictions in other states. As such, staff do not recommend requiring stealth throughout the City.

**RECOMMENDATION:** Set a public meeting for October 4<sup>th</sup>, 2016, at which time staff will be looking for a recommendation from the Commission for adoption by the City Council.

**MOTION:** I move to schedule a public meeting for October 4, 2016 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. 2016-15**

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."

**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**

<b><u>Zone Category</u></b>	<b><u>Located in Public Right-of-way (ROW)</u></b>	<b><u>Maximum Tower Height</u></b>	<b><u>Stealth Design</u></b>	<b><u>Setback from Property Lines (does not apply within ROW)[2]</u></b>
<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</u>	<u>150'</u>	<u>Optional[1]</u>	<u>20'</u>

<p><u>(allowed in ROW only</u> <u>if</u> <u>less than</u> <u>or equal</u> <u>to 70')</u></p>			
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[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**

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

[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 ¼ 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 MaintenanceFCC 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 completed 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 . 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 incompleteness, 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.