

ORDINANCE NO. 831

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 4, SECTIONS 800 THROUGH 814 TO ADDRESS THE NEW RULES PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Wilsonville is authorized, under existing State of Oregon (“State”) and federal law, to enact appropriate regulations and restrictions relative to small wireless facilities, distributed antenna systems, and other personal wireless telecommunication facility installations in the public right-of-way consistent with State and federal law; and

WHEREAS, the City of Wilsonville encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of small wireless facilities while managing public rights-of-way in a manner that promotes the interests of the public health, safety and welfare; and

WHEREAS, the City of Wilsonville recognizes that the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Declaratory Ruling”) on September 26, 2018, interpreting the federal law and creating new federal regulations regarding small wireless facilities that become effective on January 14, 2019; and

WHEREAS, the City of Wilsonville finds it necessary to be in compliance with the FCC’s Declaratory Ruling and the new federal regulations; and

WHEREAS, the City of Wilsonville is aware that in order to be in compliance with the FCC’s Declaratory Ruling it must address conflicts between WC 4.800 through 4.814 and the new federal regulations; and

WHEREAS, the City of Wilsonville recognizes that the FCC’s review standards requires review of an application to collocate a small wireless facility on an existing structure to be completed within 60 days and review of an application for a small wireless facility on its own stand-alone pole to be completed in 90 days, which timeframes warrant a Class I Administrative Review process under the Wilsonville Development Code; and

WHEREAS, the City has provided the Oregon Department of Land Conservation and Development the required notice for amendments to the Development Code; and

WHEREAS, the effective date of the Declaratory Ruling and new regulations renders it impossible for the City to conduct a public hearing with the Planning Commission, but the City has advised the Planning Commission of the Declaratory Ruling and City response.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. FINDINGS.

The above-recited findings, including the staff reports dated December 17, 2018 and January 7, 2019, are adopted and incorporated by reference herein. The City Council further finds and concludes that the adoption of the proposed Development Code amendments is necessary for the good of the public and to protect the health, safety, and welfare of the municipality.

2. DETERMINATION.

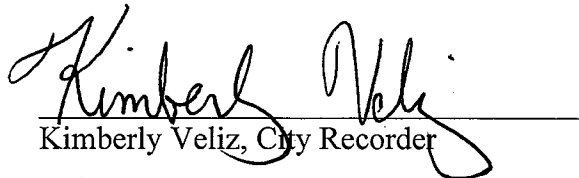
Based on such findings, the City Council hereby adopts the Development Code amendments attached hereto as Exhibit 1. The City Recorder is hereby directed to prepare final formatting to make sure such style and conforming changes match the format and style of the Wilsonville Development Code.

3. EFFECTIVE DATE OF ORDINANCE.

This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist and this Ordinance shall be in full force and effect on January 24, 2019.

4. Except as set forth above, Chapter 4 of the Wilsonville Code remains in full force and effect as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 7th day of January, 2019, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon, and scheduled for a second reading at a regular meeting of the Council on January 24, 2019 commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon..


Kimberly Veliz, City Recorder

ENACTED by the City Council on the 24th day of January, 2019, by the following votes:

Yes: 3 No: 0



Kimberly Veliz, City Recorder

DATED and signed by the Mayor the 24th day of January, 2019.



TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Stevens	Abstained
Councilor Lehan	Excused
Councilor West	Yes

Attachments:

Exhibit 1 – Revised Wilsonville Code Chapter 4, Sections 800 through 814.

**WILSONVILLE CODE
PLANNING AND LAND DEVELOPMENT**

**CHAPTER 4 – SECTIONS 4.800 – 4.804814
WIRELESS COMMUNICATIONS FACILITIES**

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WIRELESS COMMUNICATIONS FACILITIES

Section 4.800. Wireless Communications Facilities – Permitted, Conditionally Permitted, And Prohibited Uses.

Purpose:

Wireless Communications Facilities (“WCF”) play an important role in meeting the communication needs of Wilsonville citizens. This Section aims to balance the proliferation of and need for WCF with the importance of keeping Wilsonville a livable and attractive City, consistent with City regulations for undergrounding utilities to the greatest extent possible.

In accordance with the guidelines and intent of Federal law and the Telecommunications Act of 1996, these regulations are intended to: 1) protect and promote the public health, safety, and welfare of Wilsonville citizens; 2) preserve neighborhood character and overall City-wide aesthetic quality; 3) encourage siting of WCF in locations and by means that minimize visible impact through careful site selection, design, configuration, screening, and camouflaging techniques.

As used herein, reference to Wireless Communications Facilities is broadly construed to mean any facility, along with all of its ancillary equipment, used to transmit and/or receive electromagnetic waves, radio or television signals including, but not limited to, antennas, dish antennas, microwave antennas, small cells, distributed antenna systems (“DAS”), 5G, small cell sites/DAS , and any other types of equipment for transmission or receipt of signals, including telecommunication towers, poles, and similar supporting structures, equipment cabinets or buildings, parking and storage areas, and all other accessory development.

Reference to Small Wireless Facilities (SWF) herein is construed to mean telecommunications facilities and associated equipment that meet the definition of small wireless facilities as stated in 47 C.F.R. § 1.6002(l).

This Section does not apply to (i) amateur radio stations defined by the Federal Communication Commission and regulated pursuant to 47 C.F.R. Part 97; or (ii) WCF owned by, or operated solely for, the City of Wilsonville.

If any provision of this Code directly conflicts with State or Federal law, where State or Federal law preempts local law, then that provision of this Code shall be deemed unenforceable, to the extent of the conflict, but the balance of the Code shall remain in full force and effect.

Nothing contained in this Section shall be construed in any way to waive or limit the City’s proprietary rights over its real and personal property, including without limitation any proprietary interest in the right-of-way. Thus, if it is determined the City has authority to exert greater rights or impose additional conditions or limitations beyond those set forth in this Section, the City reserves the absolute right to do so, as it determines appropriate or necessary.

(.01) Permitted Uses.

- A. Towers, poles, and structures for WCF and ancillary facilities thereto are permitted ~~subject to submission of a complete City developed and approved application, payment of all fees, and approval through the Class II Administrative~~

~~Review process listed in Section 4.030.B of the Wilsonville Code,~~ in all of the following locations:

1. Any property owned by the City of Wilsonville, including public right-of-way;
 2. Any property owned by the West Linn - Wilsonville School District;
 3. Any property owned by the Tualatin Valley Fire District;
 4. Any property within an electric utility substation.
- B. Co-locating WCF is encouraged on all existing, legally established, towers, poles, and structures in all zones and may be required on City property.
- C. Satellite communications antennas not exceeding one (1) meter in diameter shall be permitted in any zone without requiring Administrative Review. ~~All others are subject to Class II review~~
- D. Camouflaged WCF antennas attached to existing light, power, or telephone poles are permitted in all zones, subject to the development standards of Section 4.803, ~~and subject to City approval through the Class II Administrative Review process listed in Section 4.030 of the Wilsonville Code.~~
- F. The City of Wilsonville is an underground utility City (Undergrounding District) where mandatory aesthetic design standards do not unreasonably preclude WCF by requiring undergrounding of all equipment to the maximum extent possible. Therefore, no new vertical elements will be allowed on City property if there are existing facilities available to reasonably accommodate the WCF, and all equipment other than the antennas shall be placed underground to the maximum extent possible. The following shall be used to determine maximum extent possible:
1. Equipment functional underground;
 2. Location available to underground near associated antenna; and
 3. Conflicts with other underground uses as determined by the City
- (.02) Conditional Uses. Except as ~~provided above~~ indicated as permitted in (.01) above, ~~WCF shall be can be allowed~~ conditionally permitted in all zones, ~~upon approval of a conditional use permit pursuant to Section 4.184 of the Wilsonville Code, subject to the following limitations:~~
- ~~A. In any commercial Master Planning Area, WCF attached to existing permitted structures shall be permitted as conditional uses if WCF design review and screening criteria, as described in Wilsonville Code Sections 4.176 and 4.400, are met. All other WCF are prohibited.~~
- (.03) Prohibited Uses. WCF are prohibited on all lands designated as Significant Resource Overlay Zone lands.

Section 4.801. Application Requirements.

Cable providers that occupy any portion of the City's right-of-way are required to enter into a Franchise Agreement with the City. Other utilities, including Competitive Local Exchange Competitor carriers are subject to the terms of the City's Privilege Tax Ordinance No. 616. In order to be permitted, an applicant must complete: 1) a Site Development Permit Application; 2) a Public Works Permit; 3) a Building Permit; and 4) enter into a Lease Agreement with the City for use of the public Right-of-Way. In preparing the Application, the applicant should review all provisions of this Code Section, particularly the portion attached to the Development Review Standards. The WCF Application process shall include all of the following:

- (.01) Speculation. No Application for a WCF shall be approved from an applicant that constructs WCF and leases tower space to service providers that is not itself a wireless service provider, unless the applicant submits a binding written commitment or executed lease from a service provider to utilize or lease space on the WCF.
- (.02) Geographical Survey. The applicant shall identify the geographic service area for the proposed WCF, including a map showing all of the applicant's existing sites in the local service network associated with the gap that the proposed WCF is proposed to close. The applicant shall describe how this service area fits into and is necessary for the service provider's service network. Prior to the issuance of any building permits, applicants for WCF shall provide a copy of the corresponding FCC Construction Permit or license for the facility being built or relocated, if required. The applicant shall include a vicinity map clearly depicting where, within a one-half (1/2) mile radius, any portion of the proposed WCF could be visible, and a graphic simulation showing the appearance of the proposed WCF and all accessory and ancillary structures from two separate points within the impacted vicinity, accompanied by an assessment of potential mitigation and screening measures. Such points are to be mutually agreed upon by the Planning Director or the Planning Director's designee and the applicant. This Section (.02) is not applicable to applications submitted subject to the provisions of 47 U.S.C. 1455(a).
- (.03) Visual Impact, Technological Design Options, and Alternative Site Analysis. The applicant shall provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening for all components of the facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall include a map showing where the photos were taken. The applicant shall include an analysis of alternative sites and technological design options for the WCF within and outside of the City that are capable of meeting the same service objectives as the preferred site with an equivalent or lesser visual impact. If a new tower or pole is proposed as a part of the proposed WCF, the applicant must demonstrate the need for a new tower and pole and why existing locations or design alternatives, such as the use of microcell technology, cannot be used to meet the identified service objectives. Documentation and depiction of all steps that will be taken to screen or camouflage the WCF to minimize the visual impact of the proposed facility must be submitted.

- (.04) Number of WCF. The Application shall include a detailed narrative of all of the equipment and components to be included with the WCF, including, but not limited to, antennas and arrays; equipment cabinets; back-up generators; air conditioning units; poles; towers; lighting; fencing; wiring, housing; and screening. The applicant must provide the number of proposed WCF at each location and include renderings of what the WCF will look like when screened. The Application must contain a list of all equipment and cable systems to be installed, including the maximum and minimum dimensions of all proposed equipment. Wilsonville is an Undergrounding District, meaning that the City will require any utility that can be fully or partially located underground to the maximum extent possible to help preserve the aesthetic appearance of the right-of-way and community and to prevent aboveground safety hazards. Therefore, all components of the WCF must be undergrounded to the extent reasonably feasible. Those components of the WCF that must be above ground must be identified by type of facility, dimension of facility, with proposed screening to reduce to the maximum extent possible the visual impact of aboveground facilities and equipment. A written narrative of why any portion of the WCF must be above ground is required. ~~Cost savings is not a valid reason for placing facilities and equipment above ground except where the applicant conclusively shows that this requirement would result in an effective or actual prohibition of the telecommunications service.~~
- (.05) Safety Hazards. Any and all known or expected safety hazards for any of the WCF facilities must be identified and the applicant who must demonstrate how all such hazards will be addressed and minimized to comply with all applicable safety codes.
- (.06) Landscaping. The Application shall provide a landscape plan, drawn to scale, that is consistent with the need for screening at the site, showing all proposed landscaping, screening and proposed irrigation (if applicable), with a discussion of how proposed landscaping, at maturity, will screen the site. Existing vegetation that is proposed to be removed must be clearly indicated and provisions for mitigation included.
- (.07) Height. The Application shall provide an engineer's diagram, drawn to scale, showing the height of the WCF and all of its above-ground components. Applicants must provide sufficient evidence that establishes that the proposed WCF is designed to the minimum height required to meet the carrier's coverage objectives. If a tower or pole height will exceed the base height restrictions of the applicable zone, this narrative shall include a discussion of the physical constraints (topographical features, etc.) making the additional height necessary. The narrative shall include consideration of design alternatives, including the use of multiple sites or designs that would avoid the need for the new WCF or over zone height WCF. Except as noted in (a) and (b) below, the maximum height allowed in the right-of-way is fifty (50) feet.
- a. The maximum height for a freestanding SWF in the public right-of-way is no more than 10% taller than other adjacent structures in the right-of-way.
 - b. When collocated on an existing structure in the public right-of-way, the SWF and the existing structure (including the antenna and any equipment enclosures contained within the structure) shall not exceed 50 feet or more than 10% of the existing structure or nearby structures, whichever is greater.

- (.08) Construction. The Application shall describe the anticipated construction techniques and time frame for installation of the WCF.
- (.09) Maintenance. The Application shall describe the anticipated maintenance and monitoring program for the WCF, including antennas, back-up equipment, poles, paint, and landscaping.
- (.10) Noise/Acoustical Information. The Application shall provide manufacturer's specifications for all noise-generating equipment, such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties. The applicant shall provide a noise study prepared and sealed by a qualified Oregon-license Professional Engineer that demonstrates that the WCF will comply with intent and goals of Section 6.204 et seq. of this Code.
- (.11) Parking. The Application shall provide a site plan showing the designated parking areas for maintenance vehicles and equipment, if any. No parking of maintenance vehicles and equipment parking shall be permitted in any red curb zone, handicap parking zone, or loading zone.
- (.12) Co-Location. In the case of new multi-user towers, poles, or similar support structures, the applicant shall submit engineering feasibility data and a letter stating the applicant's willingness to allow other carriers to co-locate on the proposed WCF.
- (.13) Lease. The site plan shall show the lease area of the proposed WCF.
- (.14) FCC License and Radio Frequency Safety Compliance. The Application shall provide a copy of the applicant's FCC license and/or construction permit, if an FCC license and/or construction permit is required for the proposed facility. The applicant shall provide documentation showing that the party responsible for radio frequency transmissions is in planned or actual compliance with all FCC RF emissions safety standards and guidelines at 47 C.F.R. § 1.1307 et seq. and FCC Office of Engineering Technology Bulletin 65.
- (.15) Lighting and Marking. The Application shall describe any proposed lighting and marking of the WCF, including any required by the FAA.
- (.16) Co-Location Feasibility. A feasibility study for the co-location of any WCF as an alternative to new structures must be presented and certified by an Oregon-licensed Professional Engineer. Co-location will be required when determined to be feasible. The feasibility study shall include:
- A. An inventory, including the location, ownership, height, and design of existing WCF within one-half (1/2) mile of the proposed location of a new WCF. The planning director may share such information with other applicants seeking permits for WCF, but shall not, by sharing such information, in any way represent or warrant that such sites are available or suitable.
 - B. Documentation of the efforts that have been made to co-locate on existing or previously approved towers, poles, or structures. The applicant shall make a good faith effort to contact the owner(s) of all existing or approved towers, poles, or

structures and shall provide a list of all owners contacted in the area, including the date, form, and content of such contact.

- C. Documentation as to why co-location on existing or proposed towers, poles, or commercial structures within one thousand (1,000) feet of the proposed site is not practical or feasible. Co-location shall not be precluded simply because a reasonable fee for shared use is charged or because of reasonable costs necessary to adapt the existing and proposed uses to a shared tower. The Planning Director and/or Development Review Board may consider expert testimony to determine whether the fee and costs are reasonable when balanced against the market and the important aesthetic considerations of the community.

(.17) Engineering Report for New Location.

- A. An Application for a new WCF, whether co-located or new, shall include, as applicable, a report from an Oregon licensed Professional Engineer documenting the following:
 - 1. A description of the proposed WCF height and design, including technical, engineering, and other pertinent factors governing selection of the proposed design. A cross-section of the proposed WCF structure shall be included. The engineer shall document whether the structure is at its maximum structural capacity and, if not, the additional weight the structure could support.
 - 2. Documentation that the proposed WCF will have sufficient structural integrity for the proposed uses at the proposed location, in conformance with the minimum safety requirements of the State Structural Specialty Code and EIA/TIA 222 (Structural Standards for Communication and Small Wind Turbine Support Structures), latest edition at the time of the application.
- B. A description of mitigation methods which will be employed to avoid ice hazards, including increased setbacks, and/or de-icing equipment, if required by any safety law, regulation, or code.
- C. Evidence that the proposed WCF will comply with all applicable requirements of the Federal Aviation Administration, the Aeronautics Section of the Oregon Department of Transportation, and the Federal Communications Commission.

(.18) Maintenance. The applicant shall provide a description of anticipated maintenance needs, including frequency of service, personnel needs, equipment needs and potential safety impacts of such maintenance.

(.19) Recordation Requirements. If a new WCF is approved, the owner shall be required, as a condition of approval, to:

- A. Record the conditions of approval specified by the City with the Deeds Records Office in the Office of the County Recorder of the county in which the WCF is located;
- B. Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant;

- C. Negotiate in good faith for shared use by others; and
 - D. Such conditions shall run with the land and be binding on subsequent purchasers of the WCF.
- (.20) The Planning Director may request any other information deemed necessary to fully evaluate and review the information provided in the application.

Section 4.802. Co-Location.

In order to encourage shared use of towers, poles, or other facilities for the attachment of WCF, no conditional use permit shall be required for the addition of equipment, provided that:

- (.01) There is no change to the type of tower or pole.
- (.02) All co-located WCF shall be designed in such a way as to be visually compatible with the structures on which they are placed.
- (.03) All co-located WCF must comply with the conditions and concealment elements of the original tower, pole, or other facility upon which it is co-locating.
- (.04) Shall not disturb, or will mitigate any disturbed, existing landscaping elements.
- (.05) Does not entail excavation or deployment outside site of current facility where co-location is proposed.
- (.06) All co-located WCF, and additions to existing towers, poles, or other structures, shall meet all requirements of the State of Oregon Structural Specialty Code and EIA/TIA 222 (Structural Standards for Communication and Small Wind Turbine Support Structures), latest edition at the time of the application. A building permit shall be required for such alterations or additions. Documentation shall be provided by an Oregon-licensed Professional Engineer verifying that changes or additions to the tower structure will not adversely affect the structural integrity of the tower.
- (.07) Additional Application Requirements for Co-Location:
 - A. A copy of the site plan approved for the original tower, pole, or other base station facility to which the co-location is proposed.
 - B. A site survey delineating development on-the-ground is consistent with the approved site plan.

Section 4.803. Development Review Standards.

All WCF shall comply with the following Development Review standards, unless grandfathered under State or Federal law:

- (.01) Visual Impact.
 - A. Maximum Number of High Visibility Facilities Per Lot or Parcel. No more than one high visibility WCF is allowed on any one lot or parcel of five acres or less. The Development Review Board may approve exceeding the maximum number of high visibility WCF per lot or parcel if one of the following findings is made

through a Class III review process: (1) co-location of additional high visibility WCF is consistent with neighborhood character, (2) the provider has shown that denial of an application for additional high visibility WCF would prohibit or have the effect of prohibiting service because the WCF would fill a significant gap in coverage and no alternative locations are available and technologically feasible, or (3) the provider has shown that denial of an application for additional high visibility WCF would unreasonably discriminate among providers of functionally equivalent services. In such cases, the Development Review Board shall be the review authority for all related applications.

- B. Height. The tower or pole height of a freestanding WCF in R, PDR and RA-H zones shall not exceed fifty (50) feet, except the following:
1. ~~that the~~ RA-H zoned property occupied by the City Wastewater Treatment Plant and the PDR zoned property occupied by the Elligsen Road Water Reservoir shall be exempted from the height limitations of the subject zones, and subsection 4.803(.01)A, above, shall apply.
 2. Small Wireless Facilities in the public right-of-way. SWF in the public right-of-way shall not exceed the height permitted under WC 4.801(.07).
- C. WCF Adjacent to Residentially Designated Property. In order to ensure public safety, all WCF located adjacent to any property designated as residential in Wilsonville shall be set back from all residential property lines by a distance at least equal to the maximum height of the facility including any antennas or other appurtenances attached thereto. The setback shall be measured from that part of the WCF that is closest to the neighboring residentially designated property.
- D. Historical Buildings and Structures. No WCF shall be allowed on any building or structure, or in any district, that is listed on any Federal, State, or local historical register unless it is determined by the Development Review Board that the facility will have no adverse effect on the appearance of the building, structure, or district. No change in architecture and no high visibility facilities are permitted on any such building, any such site, or in any such district.
- E. Tower or Pole Heights. Towers or poles may exceed the height limits otherwise provided for in the Development Code with compelling justification only. Costs and cost efficiency are not compelling justifications.
- F. Accessory Building Size. Within the public right-of-way, no above-ground accessory buildings shall be permitted. Outside of the public right-of-way, all accessory buildings and structures permitted to contain equipment accessory to a WCF shall not exceed twelve (12) feet in height unless a greater height is necessary and required by a condition of approval to maximize architectural integration. Each accessory building or structure is limited to two hundred (200) square feet, unless approved through a Conditional Use Permit.
- G. Utility Vaults and Equipment Pedestals. Within the public right-of-way, utility vaults and equipment pedestals associated with WCF must be underground to the maximum extent possible.

- H. Visual Impact. All WCF shall be designed to minimize the visual impact to the maximum extent possible by means of placement, screening, landscaping, and camouflage. All WCF shall also be designed to be compatible with existing architectural elements, building materials, and other site characteristics. All WCF shall be sited in such a manner as to cause the least detriment to the viewshed from other properties. The use of radomes and/or other camouflage techniques acceptable to the City to conceal antennas, associated equipment and wiring, and antenna supports is required.
- I. Color Schemes. For the sake of visual impact, no wooden poles are allowed except Small Wireless Facilities on existing poles with high voltage power lines that would require thermal hydraulic cooling if undergrounded. Color schemes must be approved by the City to best camouflage with the surrounding landscape.
- J. Antennas. Façade-mounted antennas shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. As appropriate, antennas shall be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Façade-mounted antennas shall not extend more than two (2) feet out from the building face. Roof-mounted antennas shall be constructed at the minimum height possible to serve the operator's service area and shall be set back as far from the building edge as possible or otherwise screened to minimize visibility from the public right-of-way and adjacent properties.
- K. Noise. Noise from any equipment supporting the WCF shall meet the requirements of City Code Section 6.204 – Noise.
- L. Signage. No signs, striping, graphics, or other attention-getting devices are permitted on any WCF except for warning and safety signage with a surface area of no more than three (3) square feet. Except as required by law, all signs are prohibited on WCF except for one non-illuminated sign, not to exceed two (2) square feet, which shall be provided at the main entrance to the WCF, stating the owner's name, the wireless operator(s) if different from the owner, and address and a contact name and phone number for emergency purposes. WCF may be placed entirely behind existing street or building signs as one method of camouflage.
- M. Traffic Obstruction. Maintenance vehicles servicing facilities located in the public right-of-way shall not park on the traveled way or in a manner that obstructs traffic. No maintenance vehicle parking shall be permitted in red curb zones, handicap zones, or loading zones.
- N. Parking. No net loss in minimum required parking spaces shall occur as a result of the installation of any WCF.
- O. Sidewalks and Pathways. Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land and shall be screened from view. Cabinets shall be undergrounded, to the maximum extent possible.

P. Lighting. WCF shall not include any beacon lights or strobe lights, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If beacon lights or strobe lights are required, the Development Review Board shall review the available alternatives and approve the design with the least visual impact. All other site lighting for security and maintenance purposes shall be shielded and directed downward, and shall comply with the City's outdoor lighting standards in City Code Section 4.199, unless otherwise required under Federal law.

Q. Paint and Finish.

Towers, poles, antennas, and associated equipment shall either maintain a galvanized steel finish or be painted a non-reflective, neutral color, as approved by the Planning Director or Development Review Board, to minimize visibility. Attached communication facilities shall be painted so as to be identical to or compatible with the existing structure. Towers more than two hundred (200) feet in height shall be painted in accordance with the Oregon State Aeronautics Division and Federal Aviation Administration rules. Applicants shall attempt to seek a waiver of OSAD and FAA marking requirements. When a waiver is granted, towers shall be painted and/or camouflaged in accordance with subsection (.01), above. All ancillary facilities shall be colored or surfaced so as to blend the facilities with the surrounding natural and built environment.

R. Use of Concealments. Concealments are customized structures engineered to cover cell towers, antennas, DAS equipment and beautify them and make them either less visible or more pleasing to have in the landscape. Applicant shall present a proposal for concealment intended to meet the foregoing goal.

S. Public Works Standards. Additional applicable construction and design standards are as set forth in the City's 2015 Public Works Standards.

T. Compliance With All Laws. Every WCF shall comply with all local, state, and federal laws, codes, and regulations including without limitation to the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(.02) Site Size.

The site on which a transmission tower/pole is located shall be of a sufficient shape and size to provide all required setbacks as specified in this Code Section. Towers or poles only as permitted herein may be located on sites containing other principal uses in the same buildable area as long as all of the other general requirements of this Code Section are met.

(.03) Separation and Setbacks.

A. WCF shall be set back from any other property line by a distance at least equal to the maximum height of the facility including any antennas or other appurtenances attached thereto unless this requirement is specifically waived by the Planning

Director or the Development Review Board for purposes of mitigating visual impacts or improving compatibility with other uses on the property.

- B. A guyed tower located on sites containing other principal uses must maintain a minimum distance between the tower and other principal uses of the greater of 100% breakpoint or twenty-five (25) feet, unless this requirement is specifically waived by the Planning Director or Development Review Board for purposes of mitigating visual impacts or improving compatibility with other uses on the property.
 - C. WCF mounted on rooftops or City-approved alternative tower structures shall be exempt from these minimum separation requirements. However, WCF and related equipment may be required to be set back from the edge of the roof line in order to minimize their visual impact on surrounding properties and must be screened.
 - D. WCF towers and poles are prohibited in the required front yard, back yard, or side yard setback of any lot in any zone, and no portion of any antenna array shall extend beyond the property lines. For guyed towers or poles, all guy anchors shall be located outside of the setback from all abutting properties.
- (.04) Security Fencing. WCF or towers shall be enclosed by decay-resistant security fencing not less than six (6) feet in height and shall be equipped with an appropriate anti-climbing device. Fencing shall be compatible with other nearby fencing. Such requirements may be waived for attached WCF.
- (.05) Landscaping. Landscaping shall be placed around the outside perimeter of the security fencing and shall consist of fast growing vegetation that can be expected to reach a minimum height of six (6) feet and form a continuous hedge within two (2) years of planting. Drought tolerant landscaping materials shall be required and otherwise meet the landscaping standards of City Code Section 4.176. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed twenty (20) feet in height and would not affect the stability of the guys should they be uprooted. Landscaping shall be compatible with other nearby landscaping.
- (.06) Conflict with Right-of-Way. No WCF shall be located within a planned or existing public right-of-way, unless it is specifically designed for the purpose in a way that will not impede pedestrian, bicycle, or vehicular traffic and the installation of any sidewalk or path that is a planned future improvement.
- (.07) Change to Approved WCF. Any change to or expansion of a WCF that will in any way change the physical appearance of the WCF will require a new application.

Section 4.804. Review Process and Approval Standards.

- (.01) Class I Process: The following WCF are allowed with the approval of a WCF Site Plan to be reviewed by the Planning Director pursuant to a Class I process under City Code Section 4.030 (.01) A:
- A. Small Wireless Facilities in the public right-of-way.

B. Replacement of existing antennas on approved tower at same height.

(.02) Class II Process. The following WCF are allowed with the approval of a WCF Site Plan to be reviewed by the Planning Director pursuant to a Class II process under City Code Section 4.030(.01)B:

- A. WCF proposed in the following locations excepted as noted in (.01) above:
 - 1. Any property owned by the City of Wilsonville, including public right-of-way;
 - 2. Any school property owned by any public school district;
 - 3. Any fire station property owned by any fire district;
 - 4. Any property within an electric utility substation.
- B. WCF attached to existing light, power, or telephone poles in all zones, subject to the development standards of Section 4.803.
- C. WCF Co-locations meeting the criteria outlined in Wilsonville Code 4.802.
- D. Satellite dishes larger than one (1) meter.

(.0203) Conditional Use Permit Requirements. Applications for WCF in all other locations and situations, including moderate or high visibility facilities that exceed the height limit of the applicable zone, shall also require a Conditional Use Permit to be reviewed by the Development Review Board. In addition to the approval standards in City Code Section 4.030, the applicant shall demonstrate that the WCF Site Plan approval standards in this Section are met.

(.0304) Approval Criteria. The Development Review Board shall approve the use and WCF Site Plan for any of the WCF listed in subsections (.01) and (.0102) of this Section upon a determination that the following criteria are met:

- A. The height of the proposed WCF does not exceed the height limit of the underlying zoning district, or does not increase the height of an existing facility.
- B. The location is the least visible of other possible locations and technological design options that achieve approximately the same signal coverage objectives.
- C. The location, size, design, and operating characteristics of the proposed WCF will be compatible with adjacent uses, residences, buildings, and structures, with consideration given to:
 - 1. Scale, bulk, coverage, and density;
 - 2. The suitability of the site for the type and intensity of the proposed WCF; and
 - 3. Any other relevant impact of the proposed use in the setting where it is proposed.
- D. All required public facilities have adequate capacity, as determined by the City, to serve the proposed WCF; and
- E. The proposed WCF complies with all of the general regulations contained in this Section 4.800 – 4.812.

(.0405) Conditions of Approval. The City may impose any other reasonable condition(s) deemed necessary to achieve compliance with the approval standards, including designation of an alternate location. If compliance with all of the applicable criteria cannot be achieved through the imposition of reasonable conditions, the Application shall be denied.

Section 4.805. Exemptions.

The following shall be considered exempt structures or activities under this Code Chapter:

(.01) Antennas (including direct-to-home satellite dishes, TV antennas, and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations regardless of zone capacity.

(.0302) Cell on Wheels (COW), which are permitted as temporary uses in nonresidential zones for a period not to exceed sixty (60) days, except that such time period may be extended by the City during a period of emergency as declared by the City, County, or State.

(.0403) Replacement antennas or equipment, provided the replacement antennas and/or equipment have the same function, size, and design to the replaced antenna and/or equipment and do not exceed the overall size of the original approved antenna and/or equipment.

Section 4.806. Damage, Destruction, or Interference to Other Utilities.

In the installation of any WCF within the right-of-way, care must be taken to install in such a way that does not damage, interfere with, or disturb any of the several other utilities that may already be located in the area. Any damage done to such other utilities must be immediately reported to both the City and the owner of the damaged utility, and must be promptly repaired by the permittee or the utility owner, with the permittee being responsible for all costs of repair, including any extra charges that may be assessed for emergency repairs. Failure to notify the City and the damaged utility provider will result in revocation of the WCF. When approving the location for a WCF, the location of other utilities, or the need for the location of other utilities, within the right-of-way must be considered before approval to locate the WCF will be given in order to ensure those other services to the public are not disrupted.

Section 4.807. Maintenance.

The following maintenance requirements apply to WCF, as applicable:

(.01) All landscaping shall be maintained at all times and shall be promptly replaced if not successful.

(.02) If a flag pole is used for camouflaging a facility, flags must be flown and must be properly maintained at all times. If a United State Flag is flown, it shall be illuminated as required by the United States Flag Code.

- (.03) All WCF sites shall be kept clean, neat, and free of litter.
- (.04) A WCF shall be kept clean and painted in good condition at all times. Rusting, dirt, or peeling facilities are prohibited.
- (.05) All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.
- (.06) Any graffiti on a WCF must be promptly removed at Owner's expense.

Section 4.808. Permit Tracking.

The permittee of each permit issued to it by the City shall retain full and complete copies of all permits and other regulatory permits issued in connection with this facility. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails or refuses to retain or produce full and complete permits or other regulatory approvals in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be resolved against the permittee.

Section 4.809. Inspections.

- (.01) The City or its agents shall have authority to enter onto the property upon which a WCF is located to inspect the facility for the purpose of determining whether it complies with the Building Code and all other construction standards provided by the City and Federal and State law.
- (.02) As a condition of approval and prior to final inspection of the WCF, the applicant shall submit evidence, such as photos, to the satisfaction of the City, sufficient to prove that the WCF is in substantial conformance with photo simulations provided with the application. Nonconformance shall require modification to compliance within thirty (30) days or the WCF, or nonconforming components, must be removed.
- (.03) The City reserves the right to conduct such inspections at any time, upon reasonable notice to the WCF owner. In the event such inspection results in a determination that violation of applicable construction and maintenance standards set forth by the City has occurred, remedy of the violation may include cost recovery for all costs incurred in conforming and processing the violation.

Section 4.810. Preexisting WCF.

WCF that lawfully existed prior to the adoption of this Chapter shall be allowed to continue their use as they presently exist. This Code does not make lawful any WCF that are not fully approved on the date the ordinance codified in this Code is adopted and those pending WCF will be required to meet the requirements of this Code. Routine maintenance shall be permitted on such lawful preexisting WCF. Lawfully existing WCF may be replaced as long as the replacement is in the exact location of the WCF being replaced and is of a construction type identical in height, width, weight, lighting, and painting. Any changes or modifications to a

replacement WCF shall not be considered routine maintenance, shall be treated as new construction, and shall comply with the requirements of this Chapter.

Section 4.811. Ancillary Facilities.

Unenclosed storage of materials is prohibited. Other building facilities, including offices, vehicle storage areas, or other similar uses not necessary for transmission or relay functions, are prohibited unless a separate land use application for such is submitted and approved.

Section 4.812. Abandoned Facilities; Discontinuation of Use.

The following requirements apply to the abandonment and/or discontinuation of use for all WCF:

- (.01) All WCF located on a utility pole shall be promptly removed at the operator's expense at any time a utility is scheduled to be placed underground or otherwise moved.
- (.02) All operators who intend to abandon or discontinue the use of any WCF shall notify the City of such intentions no less than sixty (60) days prior to the final day of use.
- (.03) WCF shall be considered abandoned ninety (90) days following the final day of use or operation.
- (.04) All abandoned WCF, including ancillary equipment, shall be physically removed by the facility owner no more than ninety (90) days following the final day of use or of determination that the facility has been abandoned, whichever occurs first.
- (.05) The City reserves the right to remove any WCF that are abandoned for more than ninety (90) days, at the expense of the facility owner.
- (.06) Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.

Section 4.813. Mandatory and Automatic Permit Conditions.

All WCF permits, whether issued by the City or approved by operation of law, shall be subject to the standard conditions of approval provided in this Section. The City may add, remove or modify any conditions of approval as necessary or appropriate to protect and promote the public health, safety and welfare.

- (.01) Permit Duration. The permit will automatically expire ten (10) years from the issuance date.
- (.02) Compliance with All Applicable Laws. Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
- (.03) Inspections; Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its

designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

- (.04) Contact Information for Responsible Parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Director within one (1) business day of permittee's receipt of the Planning Director's written request.
- (.05) Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the tower, ~~and/or~~ base station, and/or SWF is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the City attributable to the interference. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
- (.06) Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- (.07) General Maintenance. Permittee must comply with Section 4.806 at all times.

Section 4.814. Mandatory and Automatic Permit Conditions of Approval for Section 6409(a).

Any Section 6409(a) Co-Location/Modification Permit approved or deemed-granted by the operation of federal law shall be automatically subject to the conditions of approval described in this Section.

- (.01) Permit Duration. The City's grant or grant by operation of law of a Section 6409(a) Co-Location/Modification Permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) Co-Location/Modification Permit will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
- (.02) Accelerated Permit Terms Due to Invalidation. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) Co-Location/Modification Permit(s), such permit(s) shall automatically expire one (1) year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409(a) Co-Location/Modification Permits. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) Co-Location/Modification Permit when it has submitted an application for either a Conditional Wireless Facilities Permit or an Administrative Wireless Facilities Permit for those improvements before the one (1) year period ends. The Planning Director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.
- (.03) No Waiver of Standing. The City's grant or grant by operation of law of a Section 6409(a) Co-Location/Modification Permit does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) Co-Location/Modification Permit.
- (.04) Compliance with All Applicable Laws. Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
- (.05) Inspections; Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (.06) Contact Information for Responsible Parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Director upon permittee's receipt of the Planning Director's written request.
- (.07) Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i)

from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the City attributable to the interference. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- (.08) Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- (.09) General Maintenance. Permittee must comply with Section 4.806 at all times.