



PLANNING COMMISSION MEETING AGENDA

Wednesday, May 19, 2021

Zoom Virtual Platform
9611 SE 36th Street | Mercer Island, WA 98040
Phone: 206.275.7706 | www.mercergov.org

PLANNING COMMISSIONERS:

Chair: Daniel Hubbell

Vice Chair: Vacant

Commissioners: Carolyn Boatsman, Tiffin Goodman, Michael Murphy, Ted Weinberg, and Vacant

In compliance with the Americans with Disabilities Act, those requiring accommodation for meetings should notify the Staff Liaison at least 24 hours prior to the meeting.

The Planning Commission meeting will be held virtually using video conferencing technology provided by Zoom, and the public will have the opportunity to provide comment during Appearances by either calling in or logging onto the meeting as a Zoom attendee.

Registering to Speak: Individuals wishing to speak during live Appearances or during the Public Hearing will need to register their request with the Sr. Administrative Assistant at 206.275.7791 or email at andrea.larson@mercerisland.gov and leave a message before 4pm on the day of the Planning Commission meeting. Please reference "Appearances" or "Public Hearing". Each speaker will be allowed three (3) minutes to speak.

Public Comment by Video: Notify the Sr. Administrative Assistant in advance that you wish to speak on camera and staff will be prepared to permit temporary video access when you enter the live Planning Commission meeting. Please remember to activate the video option on your phone or computer, ensure your room is well lit, and kindly ensure that your background is appropriate for all audience ages. Screen sharing will not be permitted, but documents may be emailed to the [Planning Commission](#).

To attend the meeting, please use the following Zoom information:

Join by Telephone at 6:00 pm: To listen to the hearing via telephone, please call 253.215.8782 and enter Webinar ID **882 1288 3896** and Passcode **139405** when prompted.

Join by Internet at 6:00 pm: To watch the hearing over the internet via your computer microphone/ speakers follow these steps:

1. Click this [Link](#)
2. If the Zoom app is not installed on your computer, you will be prompted to download it.
3. If prompted for Meeting ID, enter **882 1288 3896**; Enter Passcode **139405**

CALL TO ORDER & ROLL CALL, 6 PM

PUBLIC APPEARANCES

This is the time set aside for members of the public to speak to the Commission about issues of concern. If you wish to speak, please consider the following points:

- Speak audibly into the podium microphone.
- State your name and address for the record.
- Limit your comments to 3 minutes.

The Commission may limit the number of speakers and modify the time allotted. Total time for appearances: 15 minutes.

PUBLIC HEARING

1. Public Hearing continued from April 21, 2021 for ZTR19-004 - Wireless Code Update

REGULAR BUSINESS

2. April 21, 2021 Minutes
3. ZTR19-004 - Wireless Code Update
Deliberation and decision on the proposed code amendment to MICC 19.06, updating the code sections related to wireless communications and small cell regulations and adopting permanent regulations that are consistent with recent updates to federal regulations.
4. ZTR19-003 Sign Code Update
Study session to review the proposed code amendment that amends MICC 19.06.020, 19.11.140 and 19.12.080 updating the code sections related to temporary signs, signs in Town Center and signs outside of Town Center, respectively.

OTHER BUSINESS

5. Director's Report
6. Planned Absences for Future Meetings
7. Announcements & Communications
8. Next Scheduled Meeting: June 16, 2021

ADJOURNMENT

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



PLANNING COMMISSION

To: Planning Commission
From: Alison Van Gorp, CPD Deputy Director
Date: May 13, 2021
RE: ZTR19-004 Wireless Code Update

SUMMARY

The proposed code amendment amends MICC 19.06, updating the code sections related to wireless communications and small cell regulations and adopting permanent regulations that are consistent with recent updates to federal regulations.

BACKGROUND

At the April 21 Planning Commission meeting, the commission held a public hearing, and continued the hearing to the May 19 meeting. After the hearing, staff guided the Commission through a review of the recommended code revisions. The Commission had the opportunity to provide detailed input. Staff have integrated this guidance into the attached updated draft code amendment (new revisions shown in red and blue). The updated draft includes the following revisions:

- Consistent usage of the term “Director” rather than “code official”
- Consistent usage of the term “feasible” without modifiers such as “physically”, “technically” or “technologically”.
- Consistent usage of the terms “wireless communications facility”, “WCF” and “small wireless facility”
- Remove from 19.06.040(M) a 90-day cap on emergency temporary wireless communication facilities (instead providing director discretion on length of deployment during emergencies).
- Rewording provisions for equipment in the ROW in 19.06.075(A)(1) to allow the placement of generators in the ROW in the case of emergency or natural disaster.
- Rewording of noise provisions in 19.06.075(A)(2) to provide additional clarity.
- Rewording of replacement/new pole provisions in 19.06.075(A)(4) and 19.06.075(A)(5) to provide additional specificity about meeting ADA requirements.
- Rewording sign provisions in 19.06.075(A)(6) to provide additional clarity.
- Rewording provisions related to secondary use of a pole in 19.06.075(B)(7) and 19.06.075(C)(12) to clarify the process for re-applying to keep a pole in the current location after the nonwireless use of the pole is abandoned. Note that poles would only be allowed to remain if they meet all current

code requirements, including the provisions related to ADA and clear and safe passage through the ROW. Thus, poles that are non-conforming (such as those that obstruct the ROW) would need to be removed and relocated.

Staff are not recommending any revisions to section 19.06.070(C) related to replacement of utility poles and street lighting. We understand that Commissioner Boatsman had concerns about the potential for proliferation of additional street lighting on neighborhood streets related to this provision. However, after discussing the matter in detail with the City Engineer, staff believe that flexibility and staff discretion is desirable related to providing the option to replace or add street light standards when utility poles are replaced. This will enable staff to require that existing lighting be replaced. It will also provide flexibility to require new lighting when it is requested by neighbors, or when staff believe additional illumination is needed near arterial intersections. The City is not pursuing additional illumination on neighborhood streets, unless requested by the neighborhood through a petition process or as part of the review of an individual wireless facility. The City currently receives such requests about once every year or two.

At the May 19 meeting, the Planning Commission will continue the Public Hearing on the draft wireless code amendment. After the public hearing, staff will provide an overview of changes to the draft code amendment and the Commission will have the opportunity to propose any additional refinements.

NEXT STEPS

Final deliberation on this amendment and a recommendation are planned for the May 19 meeting. It is anticipated that the Planning Commission's recommendation will be transmitted to City Council for review at the June 15 and July 6 meetings.

ATTACHMENTS

1. Draft amendment to MICC 19.06

CITY OF MERCER ISLAND
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, RELATING TO WIRELESS COMMUNICATIONS; AMENDING MERCER ISLAND CITY CODE (MICC) SECTION 19.06.040, WIRELESS COMMUNICATIONS; AMENDING MICC SECTION 19.06.070, SMALL CELL FACILITIES DEPLOYMENT; AMENDING MICC SECTION 19.06.075, SMALL CELL DEPLOYMENTS—DESIGN AND CONCEALMENT STANDARDS; REPEALING MICC SECTION 19.15.190, PERMIT REVIEW FOR 6409 ELIGIBLE WIRELESS COMMUNICATIONS FACILITIES; AMENDING MICC SECTION 19.16.010, DEFINITIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission issued a Declaratory Ruling and Third Report and Order (“New Rules”) relating to small cell facilities, which became effective January 15, 2019; and

WHEREAS, the New Rules significantly preempt the City’s ability to regulate the installation of small cell facilities on City-owned public rights-of-way; and

WHEREAS, Ordinance 19C-02 adopted interim design and concealment standards for the deployment of small cell facilities; and

WHEREAS, Ordinance 20-28 extended the interim design and concealment standards; and

WHEREAS, the City Council finds that deployment of small cell facilities with unregulated design and concealment standards may result in uncoordinated installations, visual blight, interference with public facilities and equipment, and traffic dangers that pose harm to public health, safety, property, and welfare; and

WHEREAS, the City Council desires to adopt permanent design and concealment standards for the deployment of small cell facilities; and

WHEREAS, upon drafting of permanent design and concealment standards, City Staff identified additional areas of the Mercer Island City Code that required amendments to comply with the latest regulatory developments in the area and to clarify standards relating to processing of applications for both applicants and staff; and

WHEREAS, the City Council hereby finds that the amendments are necessary to preserve the public peace, health, safety, and welfare; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

- Section 1. Amendment of MICC Section 19.06.040, Wireless Communications.** MICC Section 19.06.040, Wireless Communications, is hereby amended in the form provided in the attached Exhibit A, which is incorporated herein by reference.
- Section 2. Amendment of MICC Section 19.06.070, Small cell facilities deployment.** MICC Section 19.06.070, small cell facilities deployment, is hereby amended in the form provided in the attached Exhibit B, which is incorporated herein by reference.
- Section 3. Amendment of MICC Section 19.06.075, Small cell deployments—Design and concealment standards.** MICC Section 19.06.075, small cell deployments—design and concealment standards, is hereby amended in the form provided in the attached Exhibit C, which is incorporated herein by reference.
- Section 4. Repeal of MICC Section 19.15.190, Permit review for 6409 eligible wireless communications facilities.** MICC Section 19.15.190, Permit review for 6409 eligible wireless communications facilities, is hereby repealed in its entirety.
- Section 5. Amendment of MICC Section 19.16.010, Definitions.** MICC Section 19.16.010, Definitions, is hereby amended in the form provided in the attached Exhibit D, which is incorporated herein by reference. All other definitions contained in current MICC Section 19.16.010 that are not listed in Exhibit D, shall remain unchanged from how currently written.
- Section 6. Severability.** If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this Ordinance or its application to any other person, property, or circumstance.
- Section 7. Publication and Effective Date.** A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall take effect and be in full force five days after the date of publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, AT ITS REGULAR MEETING ON _____, 2021.

CITY OF MERCER ISLAND

Benson Wong, Mayor

ATTEST:

APPROVED AS TO FORM

Deborah A. Estrada, City Clerk

Bio Park, City Attorney

Date of publication:

DRAFT

Exhibit A

19.06.040 Wireless communications

This section is intended to apply to macro wireless communications facilities and other facilities that do not qualify as small wireless facilities, which are governed by MICC 19.06.070 and 19.06.075.

A. Town Center, Commercial/Office, Business and Planned Business Zones.

1. Permitted Use. Attached wireless communications facilities (WCFs) are permitted in the Town Center, commercial/office, business and planned business zones. WCFs with support structures are permitted in the commercial/office and planned business zone districts, and are not permitted in the Town Center district.

a. Town Center Zone (TC). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 15 feet. Wireless support structures are not allowed in the TC zone.

b. Commercial/Office Zone (C-O). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 10 feet. Structures shall not be located within front yard setbacks. Structures in the side and rear yards must be set back from adjacent property a distance equal to the height of the pole. New WCFs may be located on a monopole and shall not exceed 60 feet in height.

c. Planned Business Zone (PBZ) and Business Zone (B). The height of attached WCFs shall not exceed the height of the structure it is attached to by more than 10 feet. Structures shall not be located within the setbacks. New WCFs may be located on a monopole and shall not exceed 60 feet in height.

2. Performance Standards. WCFs shall comply with the standards in subsection E of this section.

B. Public Institution Zone (I-90 Corridor).

1. Permitted Use. WCFs, including antenna support structures and equipment cabinets, are permitted. Facilities must meet all of the following criteria:

a. Antennas shall not project more than two feet in height over the nearest I-90 retaining wall, unless they are located on an existing structure, and must be screened as much as possible from public views;

b. Equipment cabinet dimensions shall not exceed 480 cubic feet, should be placed underground if feasible and shall be completely screened from pedestrian and park activities with landscaping;

c. Facilities shall be within 15 feet of the pedestrian side of the I-90 retaining wall, unless they are located on an existing structure. Facilities may be located between the retaining walls in the traffic corridor;

- d. Facilities shall be at least 300 feet from any single-family dwelling, unless located between and below the top of the retaining walls in the traffic corridor;
- e. Applicants shall demonstrate that they have attempted to collocate on existing structures such as other wireless support structures, rooftops, light poles, utility poles, walls, etc.

2. Performance Standard and Location. Wireless communications facilities shall comply with the standards in subsection E of this section. No wireless communications facilities are allowed along the Greta Hackett Outdoor Sculpture Gallery, defined as the south side of I-90 between 76th Avenue SE and 80th Avenue SE.

C. Island Crest Way Corridor.

1. WCFs are permitted within the right-of-way boundary along Island Crest Way from SE 40th Street to SE 53rd Place and from SE 63rd to SE 68th Street. WCFs must be attached directly to and in-line with existing utility poles, with minimal overhang. WCF antennas shall not exceed 96 inches in length, 12 inches in width, and 12 inches in depth. The WCF must not project over the height of the pole, but a pole with a height of up to 70 feet may replace an existing pole, or a pole with a height of up to 110 feet may replace an existing pole if the WCF is being collocated with another WCF consistent with subsection F of this section. All WCFs shall be set back from adjacent residential structures by a minimum of 40 feet.

2. Performance Standards. Wireless communications facilities shall comply with the standards in subsection E of this section. Proponents shall provide an agreement with the utility pole owner granting access to the pole.

D. Residential Districts.

1. Permitted Use. WCFs are prohibited in single-family and multifamily residential zones; provided, WCFs are permitted as stated below on the following public and utility properties:

- a. South Mercer Island Fire Station, 8473 SE 68th Street. Maximum height: 60 feet;
- b. Puget Sound Energy Power Substation, 8477 SE 68th Street. Maximum height: 60 feet;
- c. Mercer Island Water Reservoir, 4300 88th Avenue SE. Maximum height: 60 feet;
- d. Island Crest Park, if the WCF is either (i) attached to an existing ballfield light standard, or (ii) attached to a new stealth designed replacement ballfield light standard located along the eastern border of Island Crest Park.
 - i. Maximum number of support structures: A maximum of two support structures (existing or replacement ballfield light standards) with up to three antennas WCFs on each such support structure, unless the proposed new antenna(s) qualify as a 6409 Eligible Facility;
 - ii. Maximum height: 110 feet; and
- e. Certain rights-of-way adjacent to Clise Park.

i. Maximum number of support structures: One stealth support structure with up to three ~~antennas~~ ~~WCFs~~ on such support structure located within the rights-of-way at the intersection of Island Crest Way, 84th Avenue SE and SE 39th Street, in a location at such intersection abutting trees and having the least visual impact while ensuring the maximum protection of mature trees.

ii. Maximum number and location of equipment cabinets: Three equipment cabinets associated with such support structure located in that portion of the SE 39th Street or 84th Avenue SE rights-of-way adjacent to Clise Park, except that if such location does not permit the proper functioning of the WCF as determined by the Director of Community Planning and Development (“Director”), then the equipment cabinet shall be located in the Island Crest Way right-of-way adjacent to Clise Park.

iii. Maximum height: 110 feet.

WCFs on the above properties may be attached or have a monopole structure. Except as to the Puget Sound Energy Substation referred to above, equipment cabinets shall be placed underground if feasible. In Island Crest Park, 84th Avenue SE or SE 39th Street right-of-way, the equipment cabinets may be placed aboveground if the ~~parks~~ Director determines there is a significant benefit to the parks by either the retention of trees and/or vegetation or the improvement of park uses. Any aboveground equipment cabinet must be properly screened consistent with subsection (E)(3) of this section. The setback of the support structure from any adjacent residential property line shall be equal to the height of the support structure except in Island Crest Park or those rights-of-way described in subsection (D)(1)(e) of this section, where the setback of the support structure shall be 40 feet from any residential structure.

E. Performance Standards.

1. Attached WCFs. Attached WCFs which are visible to the traveling public and/or neighboring residences shall be designed to blend in with the existing structure and be placed in a location which is as unobtrusive as possible to the traveling public and/or neighboring residences consistent with the proper functioning of the WCF, and use ~~compatible or neutral~~ matching to blend in with the structure to which it is attached. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened.
2. WCFs with Support Structures. WCFs with support structures shall be designed to blend into the existing site and be placed in a location which is as unobtrusive as possible consistent with the proper functioning of the WCF, and use ~~compatible or neutral~~ colors to blend into the existing site. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened with landscaping and/or fencing.
3. Equipment Cabinets. Equipment cabinets that are visible to the traveling public and/or neighboring residences shall be designed to blend in with existing surroundings, be placed underground if feasible, or placed in a location as unobtrusive as possible consistent with proper functioning of the WCF, and use ~~compatible or neutral~~ colors to blend in with the adjacent surroundings. Screening may be required using landscaping or fencing.

4. ~~Engineer Review. The city shall require any WCF applicant to present engineering data showing the coverage of its existing WCFs and establish that the proposed WCF is required in order to prevent a significant gap in service coverage. The city may hire an independent engineer or other telecommunications consultant to review the applicant's data. If such review is required by the city, the applicant shall pay all costs associated with the city hiring an independent engineer or consultant.~~

5. Priority Locations. WCFs shall be located only in the zones and properties described in this chapter and a WCF applicant shall locate any WCF in the following siting priority consistent with proper functioning of the WCF:

- a. Public properties described in subsections B and D of this section;
- b. Town Center, commercial/office and planned business zones described in subsection A of this section; and
- c. Island Crest Way corridor described in subsection C of this section.

F. Shared Facilities and Collocation. Collocation is highly encouraged. The applicant shall collocate the WCF with an existing WCF site unless the applicant can demonstrate to the city's satisfaction that such collocation is not feasible due to radio interference, usable signal, other engineering reason, property owner's refusal to lease property, or zoning restriction. The city also encourages WCF applicants to construct and site facilities with a view toward sharing sites and structures with other utilities, and accommodating the future collocation of other future WCFs.

G. Electromagnetic Radiofrequency Emissions. The city recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of radio-frequency (RF) emissions and WCFs which meet FCC standards shall not be conditioned or denied on the basis of RF impacts. As part of a complete application under this chapter, applicants shall provide to the City an affidavit signed by a licensed RF engineer stating that the proposed installation is compliant with all applicable federal RF regulations. ~~In order to provide information to its citizens, the city shall maintain file copies of ongoing FCC information concerning WCFs and radiofrequency standards. Applicants for WCFs shall be required to provide the city information on the projected power density of the facility and compliance with the FCC requirements.~~

H. When there are more than six antennas at one site, the Director shall deem that site full and deny additional antennas, unless the antenna qualifies as a 6409 Eligible Facility.

I. 6409 Eligible Facilities. 6409 eligible facilities shall be reviewed in accordance with 47 CFR Section 1.6100 ~~1.40001~~, Wireless Facility Modifications, or as hereafter amended.

1. Time Frame for Review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the city shall approve the application unless it determines that the application is not covered by 47 CFR 1.6100 (or as hereafter amended).

2. Tolling of the Time Frame for Review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the city determines that the application is incomplete. The time frame for review is not tolled by a moratorium on the review of applications.

a. To toll the time frame for incompleteness, the city must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information only to the extent reasonably related to determining whether the request meets the requirements of 47 CFR Section 1.6100 or as hereafter amended. The city cannot require an applicant to submit any other documentation, including but not limited to: documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

b. The time frame for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.

c. Following a supplemental submission, the city will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in subsection (2)(a) 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.

3. Failure to Act. In the event the city fails to approve or deny a request seeking approval under this section within the time frame for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

J. Removal of WCFs. If a WCF becomes obsolete or unused, it must be removed within six months of cessation of operation at the site.

K. Amateur Radio Facilities. Amateur Radio (ham) Towers shall be permitted by right in all zones, pursuant to the FCC Order entitled Amateur Radio Preemption, 101 FCC 2nd 952 (1985). Any height restrictions applicable to Amateur Radio (ham) Towers may be waived by the Director upon a showing by the applicant that the proposed Amateur Radio (ham) Tower is the minimum necessary for the facility to function as proposed.

L. Any design criteria required to make a facility into a stealth facility (i.e. intended to make the facility look like something other than a wireless tower or base station) shall be considered concealment elements for purposes of future eligible facilities requests.

M. Temporary Wireless Communications Facilities. Temporary Wireless Communications Facilities shall be permitted in all zones and subject to the Type I land use review process pursuant to MICC Chapter 19.15. Temporary Wireless Communications Facilities may not be deployed for more than thirty (30) days except in case of emergency or natural disaster, in which case the Director may authorize a longer period of deployment.

Exhibit B

19.06.070 Small wireless cell facilities deployment.

The following provisions establish standards for small wireless facilities ~~small cell facilities~~ deployments; provided, however, that any small wireless facilities or small wireless facilities network ~~small cell or small cell network~~ component which is not exempt from SEPA review shall also comply with Chapter 19.21 ~~19.07~~-MICC or as hereafter amended:

A. Small Wireless Cell Facility Approval Required. Small wireless cell facilities are permitted in all zoning designations subject to a Type II land use review process pursuant to Chapter 19.15 MICC. In addition to the small wireless facility cell approval, one or more right-of-way use permits may also be required for small cell wireless facility deployment.

B. Previously Approved Small Wireless Facilities Cells on Existing or Replacement Utility Poles. Eligible small wireless cell facilities permitted under the provisions of a franchise approval prior to the adoption of these standards shall be considered to have satisfied the design and concealment standards when installed and maintained in accordance with the franchise agreement.

C. Replacement Utility Pole – Street Lighting. With the express permission of the city, a replacement utility pole or a new utility pole may be permitted in the form of a new street light standard. The design of the street light standard shall be in accordance with the city lighting requirements in effect at the time of application. Wherever feasible, all equipment and cabling shall be internal to the replacement street lighting standard, or concealed through the design and implementation of a concealment plan.

D. Undergrounded Utility Areas. ~~An applicant service provider or infrastructure company~~ desiring to locate any aboveground infrastructure in an undergrounded utility area shall provide a separate, standalone pole. Pole design ~~must~~ to be approved by the city pursuant to MICC 19.06.075. However, notwithstanding the above, all backhaul, electricity, cabling and components of small wireless facilities other than antenna(s) and the pole shall be located underground to the extent feasible and all wiring, cabling to the antenna(s) or other equipment that cannot be undergrounded shall be internal to the standalone pole or concealed through the design and implementation of a concealment plan.

E. Notwithstanding any provision of MICC 19.15.030, there shall be no appeal to the Hearing Examiner of permits issued pursuant to this Section, in order to comport with the permit processing timelines set forth in 47 CFR 1.6003 (or as hereafter amended). However, nothing in this section is intended to affect any potential right of any party to any applicable judicial appeal.

Exhibit C

19.06.075 Small wireless facility cell deployments – Design and concealment standards.

Small wireless facility cell deployments, whether permitted on the right-of-way pursuant to a franchise or in accordance with this chapter, shall conform to the design standards set forth in this section.

A. Small Wireless Facility Deployment Design Standards – General Requirements. All small wireless facility cell deployments shall comply with the following provisions:

1. Ground-mounted equipment in the rights-of-way is prohibited unless such facilities are placed underground or the applicant can demonstrate that pole-mounted or undergrounded equipment is infeasible. If ground-mounted equipment is necessary, then the applicant shall submit a concealment plan pursuant to subsection G of this section. Generators located in the rights-of-way are prohibited, except in case of emergency or natural disaster.
2. Small wireless facilities shall be designed to limit noise impacts; noiseless facilities are preferred. Applicants shall deploy small wireless facilities utilizing passive cooling systems when feasible. If an applicant demonstrates that passive cooling is infeasible, they may deploy a small wireless facility utilizing a mechanical cooling system with the lowest feasible noise profile. In any event, no small wireless facility equipment shall be operated so as to produce noise in violation of Chapter 8.24 MICC.
3. Small wireless cell facilities are not permitted on traffic signal poles.
4. Placement of replacement poles and new poles and any associated equipment shall comply with city construction and sidewalk clearance standards, state and federal regulations, including the Americans with Disabilities Act (ADA) and shall maintain the path of travel, in order to provide a clear and safe passage within the rights-of-way.
5. Consistent with the provisions of subsection (4) above, replacement poles shall be located as near as possible to the existing pole subject to approval by the city engineer. ~~to the existing pole~~ The applicant must with the requirement to remove the abandoned pole immediately upon installation of the replacement pole and restore the right of way, including paving and/or sidewalks to provide clear and safe passage.
6. ~~No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna, and~~ Any such signage on equipment enclosures shall be of the minimum size and number possible to achieve the intended purpose; provided, that signs are permitted as concealment element techniques where appropriate.
7. Antennas and related equipment shall not be illuminated except for security reasons, as required by a federal or state authority, or unless approved as part of a concealment plan.
8. Side arm mounts for antennas or equipment are prohibited.

9. ~~The preferred location of a~~ A small wireless facility on a pole is the location with shall have the least possible visible impact by utilizing the smallest antenna(s) and equipment feasible.

10. Antennas, equipment enclosures, and ancillary equipment, conduit, and cable shall be located within the building or pole to the maximum extent feasible.

11. Antennas, equipment enclosures and ancillary equipment, conduit, and cable shall match the color and not adversely affect the aesthetic appearance or visual character of the building or pole upon which they are attached to the extent feasible.

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

13. ~~The Any design criteria required to make a facility into a stealth facility (i.e. intended to make the facility look like something other than a wireless tower or base station) as applicable to small cell facilities described herein shall be considered concealment elements for purposes of future eligible facilities requests and such small wireless cell facilities may only be expanded upon an eligible facilities request described in this chapter, when the modification does not defeat the concealment elements of the facility.~~

B. Small Wireless Cell Facilities Attached to Nonwooden Poles. Small wireless cell facilities attached to existing or replacement nonwooden light poles and other nonwooden poles in the right-of-way or poles outside of the right-of-way shall conform to the following design criteria in addition to the general requirements set forth in subsection A of this section:

1. Antennas and the associated equipment enclosures shall be sited and installed in a manner which minimizes the visual impact on the streetscape by either:

- a. Fully concealing the antennas and associated equipment fully within the pole; or
- b. Through a concealment plan which provides an equivalent or greater impact reduction pursuant to subsection G of this section.

2. All conduit, cables, wires, and fiber must be routed internally in the light pole. Conduit, cables, wires, and fiber extending outside the pole to connect with externally mounted antennas or equipment shall be located within shrouds, canisters, or sleeves color matched with the support pole.

3. An antenna on top of an existing pole may not extend more than six feet above the height of the existing pole and the diameter may not exceed 16 inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that they appear as a continuation of the original pole, including colored, powder coated, or other permanent coloration, to match the pole, and shall be shrouded or screened to blend with the pole. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole and shall color match the pole.

4. In addition to the increased antenna height allowed in subsection (B)(3) of this section, the height of any replacement pole may not extend more than 10 feet above the height of the existing pole or the minimum additional height necessary for adequate clearance from electrical wires, whichever is greater.

5. Any replacement nonwooden pole shall substantially conform to the design of the pole it is replacing, or the applicable city pole design standards, if the pole to be replaced does not comply with the City pole design standards at time of application.

6. The diameter of a replacement pole shall comply with applicable setback and sidewalk clearance requirements, ADA requirements, and if a replacement light standard then with the city's lighting requirements.

7. For facilities collocated with nonwireless uses, the use of the pole for the siting of a small wireless cell facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless cell facility and the small wireless cell facility and all associated equipment shall be removed, unless a permit is obtained pursuant to MICC 19.06.070, including new review under this section MICC 19.06.075.

C. Wooden Pole Design Standards. Small wireless cell facilities located on wooden poles shall conform to the following design criteria in addition to the general requirements set forth in subsection A of this section:

1. The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless cell facility; provided, that the replacement pole shall not exceed a height that would exceed the height limits to qualify as a small wireless facility is a maximum of 10 feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.

2. A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than height that if such extension would exceed the height limits to qualify as a small wireless facility 10 feet unless a further height increase is required and confirmed in writing by the pole owner and such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

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

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

5. Panel antennas shall not be mounted on the side of a pole more than 12 inches from the surface of the wooden pole, measured from the exterior surface of the pole to the furthest extent of the panel antenna.
6. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole; provided, that each antenna enclosure shall not be more than three cubic feet in volume, with a cumulative total antenna volume not to exceed 12 cubic feet.
7. In addition to the increased antenna height allowed in subsection (C)(2) of this section, a canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection (C)(1) of this section. A canister antenna mounted on the top of a wooden pole shall be consistent with the volume limit contained in the definition of small wireless facilities. not exceed 16 inches, measured at the top of the pole, and Any canister antenna shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side-mounted canister antenna, so long as the inside edge of the antenna is no more than 12 inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole that is colored to match the wooden pole.
8. In addition to the increased antenna height allowed in subsection (C)(2) of this section, an omnidirectional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.
9. All related equipment including but not limited to: ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner. Further, all related equipment must be painted or color matched to the wooden pole.
10. Equipment for small wireless cell facilities must be attached to the wooden pole, unless otherwise permitted to be ground-mounted pursuant to subsection A of this section. The equipment must be placed in the smallest enclosure possible for the intended purpose but in no event can wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing equipment on the structure, exceed 28 cubic feet in volume. ~~The equipment enclosure may not exceed 17 cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and do not cumulatively exceed 17 cubic feet.~~ The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole if such banners or road signs are allowed by the pole owner.

11. ~~Notwithstanding the dimensional standards above, the size visual effect of any the small wireless cell facility on all other aspects of the appearance of the wooden pole shall be as small as feasible minimized to the greatest extent reasonably possible.~~

12. For facilities collocated with nonwireless uses, the use of the wooden pole for the siting of a small wireless cell facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless cell facility and the small wireless cell facility and all associated equipment shall be removed, unless a permit is obtained pursuant to MICC 19.06.070, including new review under this section MICC 19.06.075.

13. All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored, powder coated, or have other permanent coloration, to match the pole. The number and size of conduits shall be minimized to the number technically necessary to accommodate the small wireless cell facility.

D. Small Wireless cell Facilities Attached to Existing Buildings. Small wireless facilities cell facilities attached to existing buildings shall conform to the following design criteria:

1. Small wireless cell facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
2. The interruption of architectural lines or horizontal or vertical reveals is discouraged.
3. New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if they complement the architecture of the existing building.
4. Small wireless facilities cells shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building and any brackets must match the color of the building.
5. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Such skirts or shrouds must also reasonably match the color of the building. Exposed cabling/wiring is prohibited.
6. Small wireless cell facilities shall be painted, colored, and textured to match the adjacent building surfaces.

E. Small wireless cell facilities mounted on cables strung between utility poles shall conform to the following standards:

1. Each strand-mounted facility shall not exceed three cubic feet in volume;
2. Only one strand-mounted facility is permitted per cable between any two existing poles;
3. The strand-mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than six feet from the pole unless a greater distance is technically necessary or required by the pole owner for safety clearance;

4. No strand-mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
5. Ground-mounted equipment to accommodate such strand-mounted facilities is not permitted, except when placed in preexisting equipment cabinets;
6. Pole-mounted equipment for strand-mounted facilities shall meet the requirements for pole-mounted small wireless facilities cells; and
7. Such strand-mounted devices must be as small as technologically possible ~~installed to cause the least visual impact~~ and with the minimum exterior cabling or wires (other than the original strand) necessary to meet the technological needs of the facility.

F. New Poles in the Rights-of-Way for Small ~~Cell~~ Wireless Facilities.

1. New poles within the rights-of-way are only permitted if the applicant can establish that:
 - a. The proposed small wireless cell facility cannot be located on an existing utility pole or light pole, electrical transmission tower, or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower or in or on a nonresidential use in a residential zone whether by roof or panel-mount or separate structure;
 - b. The proposed wireless communications facility receives approval for a concealment plan, as described in subsection G of this section;
 - c. The proposed wireless communications facility also complies with the Shoreline Master Program and SEPA, if applicable; and
 - d. No new poles shall be located in a critical area or associated buffer required by the city's critical areas ordinance, except when determined to be exempt pursuant to said ordinance.

G. The concealment plan shall include the design of the screening, fencing, or other concealment technology for a pole or equipment structure, and all related transmission equipment or facilities associated with the proposed wireless communications facility, including but not limited to fiber and power connections.

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

the service provider nor unreasonably impair the technological performance of the equipment chosen by the service provider.

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

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

DRAFT

Exhibit D

MICC Chapter 19.16.010 Definitions.

....

Antenna Array: A single or group of antenna elements and associated mounting hardware, feed lines, or other appurtenances that may share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

....

Antenna Support Structure: A vertical projection composed of metal or other material with or without a foundation that is designed for the purpose of accommodating antennas at a desired height. Types of support structures include the following:

-

1. Guyed antenna support structure - a style of antenna support structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building.
2. Lattice antenna support structure - a tapered style of antenna support structure that consists of vertical and horizontal supports with multiple legs and cross-bracing and metal crossed strips or bars to support antennas.
3. Monopole antenna support structure - a style of antenna support structure consisting of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of antenna support structure is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground. These facilities may also include flagpoles, monopines, or new utility poles and new miscellaneous poles.

-

...

Collocation: Mounting or installing an antenna facility on a pre-existing structure and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure. However, for the purposes of eligible facilities requests (6409 eligible facilities), the term shall mean as defined in 47 CFR 1.6100 (or as hereafter amended).

....

Equipment Enclosure: An enclosure used to house any wireless communication facility transmission related equipment other than antennas, usually located within and including cabinets, shelters, pedestals, or other similar enclosures used to contain electronic equipment for said purpose. This may include cabinets attached to a utility pole, light pole, or other type of pole.

....

Existing Wireless Communication Facility: A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable City zoning or siting process, or under another state or local regulatory review process; provided, that a tower that has not been

reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

....

Macro Wireless Communications Facility: Any wireless communication facility that does not meet the definition of small wireless facility. Generally, macro wireless communications facility antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro wireless communications facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and are generally capable of hosting multiple wireless service providers.

....

Satellite Dish Antenna: A type of antenna(s) and supporting structure consisting of a solid, open mesh, or bar configured reflective surface used to receive and/or transmit radio frequency communication signals. Such an apparatus is typically in the shape of a shallow dish or cone.

“Small cell” shall mean “small cell facility.”

Small Cell Deployment: The construction and installation of either small cell facilities, small cell networks, or both small cell facilities and small cell networks, together with the installation of the fiber network supporting the small cell facility and small cell network.

“Small cell facility” and “small cell network” are defined in accordance with RCW 80.36.375.

....

Small wireless facility means a facility that meets each of the following conditions:

(1) The facility -

(i) Is mounted on a structure 50 feet or less in height including their antennas; or

(ii) Is mounted on a structure no more than 10 percent taller than other adjacent structures; or

(iii) Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

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

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

(4) The facility does not require antenna structure registration with the Federal Communications Commission;

(5) The facility is not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

...

Small Wireless Facility Network: a collection of interrelated small wireless facilities designed to deliver personal wireless services.

...

Stealth Design: Wireless communications facilities designed to resemble something other than a wireless facility ~~blend into the surrounding environment as determined by the code official~~. Examples of stealth design include architecturally screened roof-mounted antennas, facilities integrated into architectural elements, and facilities designed to blend with or be integrated into light poles, utility poles, trees, steeples, or flag poles.

....

Substantial Change, Wireless Communication Facility: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater.

a. 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;

2. 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 20 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;

3. 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 preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment

outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

- 5. It would defeat the concealment elements of the eligible support structure; or
- 6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in 47 CFR Section ~~1.40001(b)(7)(i) through (b)(7)(iv)~~, 1.6100(b)(7)(i) through (b)(7)(iv) or as hereafter amended.

....

Temporary Wireless Communications Facility: Facilities that are composed of antennas and a mast mounted on a truck (also known as a cell on wheels, or “COW”), antennas mounted on sleds or rooftops, or ballast mount temporary poles. These facilities are for a limited period of time, are not deployed in a permanent manner, and do not have a permanent foundation. These facilities are typically used for large-scale events, or to provide wireless coverage in the event an existing permanent WCF is removed to allow for construction activity at the underlying site.

...

Tower: Any structure built for the sole or primary purpose of supporting any Federal Communications 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.

...

Traffic Signal Pole: A Utility Pole that supports equipment used for controlling traffic including but not limited to traffic lights, rapid flashing beacons, speed radar, or school zones flasher.

...

Utility Pole: A structure designed and used primarily for the support of electrical wires, telephone wires, or television cable and may also include lighting. A new utility pole originally constructed for the purpose of providing support for a Wireless Communication Facility (WCF) shall be regulated as a new Antenna Support Structure.

...

Wireless Communication Facility Site: 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. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by

the City, or a State or other local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the 6409(a) Eligible Facilities process.

~~**Wireless Communication Facility Tower:** 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.~~

Wireless Communications:

1. Attached Wireless Communications Facility (Attached WCF): An antenna array that is attached to an existing building or structure, including utility poles, with any accompanying attachment structure, transmission cables, and an equipment cabinet which may be located either inside or outside of the attachment building or structure.

2. ~~Wireless Communications Antenna Array (Antenna Array): One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omnidirectional antenna (whip), directional antenna (panel), and parabolic antenna (dish).~~

~~3. Wireless Communications Facility (WCF): Any unstaffed facility for the transmission and/or reception of radio frequency signals usually consisting of antennas, an equipment cabinet, transmission cables, and a support structure to achieve the necessary elevation.~~

~~34. Wireless Communications Support Structure (Support Structure): means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services). A structure designed and constructed specifically to support an antenna array, and may include a monopole tower, lattice tower, guy-wire support tower or other similar structures. Any structure which is used to attach an attached WCF to an existing building or structure (hereinafter "attachment structure") shall be excluded from the definition of and regulations applicable to support structures.~~

~~5. Wireless communications do not include small cells for the purposes of this title.~~



CITY OF MERCER ISLAND PLANNING COMMISSION SPECIAL VIDEO MEETING MINUTES

Wednesday, April 21, 2021

Item 2.

CALL TO ORDER

The Planning Commission was called to order by Chair Hubbell at 6:02pm from a remote location.

PRESENT

Chair Daniel Hubbell

Vice Chair Jennifer Mechem

Commissioner Carolyn Boatsman

Commissioner Tiffin Goodman

Commissioner Michael Murphy

Commissioner Ted Weinberg

All Commissioners participated in the meeting remotely.

ABSENT

All commissioners were present.

STAFF PRESENT

Alison Van Gorp, Deputy CPD Director and Andrea Larson, Sr. Administrative Assistant participated in the meeting remotely.

MINUTES

Moved by Weinberg; Seconded by Mechem to:

Approve the March 17, 2021 minutes.

Passed 6-0

APPEARANCES

There were no public appearances.

PUBLIC HEARING

Agenda Item #1 Public Hearing for ZTR19-004 Wireless Code Update

Chair Hubble opened the Public Hearing at 6:09pm

There were no public comments.

Chair Hubble continued the Public Hearing to the May 19, 2021 Planning Commission meeting.

REGULAR BUSINESS

Agenda Item #2: ZTR19-004 Wireless Code Update

Alison Van Gorp, CPD Deputy Director, gave a brief presentation to the Commission on ZTR19-004 – Wireless Code Update.

The Commission reviewed the draft code and provided feedback and comments on proposed changes to the draft. The Commission provided the following feedback:

- Consistent usage of the term “Director” rather than “code official”
- Consistent usage of the term “feasible” without modifiers such as “physically”, “technically” or “technologically”.
- Consistent usage of the terms “wireless communications facility”, “WCF” and “small wireless facility”
- Remove from 19.06.040(M) a 90-day cap on emergency temporary wireless communication facilities (instead providing director discretion on length of deployment during emergencies).
- Rewording provisions for equipment in the ROW in 19.06.075(A)(1) to allow the placement of generators in the ROW in the case of emergency or natural disaster.
- Rewording of noise provisions in 19.06.075(A)(2) to provide additional clarity.
- Rewording of replacement/new pole provisions in 19.06.075(A)(4) and 19.06.075(A)(5) to provide additional specificity about meeting ADA requirements.
- Rewording sign provisions in 19.06.075(A)(6) to provide additional clarity.
- Rewording provisions related to secondary use of a pole in 19.06.075(B)(7) and 19.06.075(C)(12) to clarify the process for re-applying to keep a pole in the current location after the nonwireless use of the pole is abandoned. Note that poles would only be allowed to remain if they meet all current code requirements, including the provisions related to ADA and clear and safe passage through the ROW. Thus, poles that are non-conforming (such as those that obstruct the ROW) would need to be removed and relocated.

OTHER BUSINESS

Deputy Director's Report

Alison Van Gorp, CPD Deputy Director, gave a brief update on the Commission on the Town Center retail requirements and on the work being done on growth targets for the next Comprehensive Plan update.

Planned Absences

There were no planned absences.

Next Scheduled Meeting: May 19, 2021

Announcements & Communications

Commissioner Mechem announced her resignation from the Planning Commission and that this would be her last meeting as a commissioner. The Commission recognized Commissioner Mechem for her service on the Planning Commission.

ADJOURN

The meeting adjourned at 8:19pm

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



PLANNING COMMISSION

To: Planning Commission
From: Alison Van Gorp, CPD Deputy Director
Date: May 13, 2021
RE: ZTR19-003 Sign Code Update

SUMMARY

The proposed code amendment amends MICC 19.06.020, 19.11.140 and 19.12.080 updating the code sections related to temporary signs, signs in Town Center and signs outside Town Center, respectively.

BACKGROUND

Daniel Kenny, an attorney with Ogden Murphy Wallace, has been contracted by the City to assist with drafting this code amendment. Mr. Kenny has prepared a memo summarizing the 2015 Supreme Court ruling in *Reed v. Town of Gilbert* and the implications for Mercer Island (see Attachment 1). Based on Mr. Kenny's review of the Mercer Island City Code, we are anticipating that the code amendments needed related to this change in case law are modest.

At the May 19 meeting, Mr. Kenny will make a presentation to the Planning Commission covering the *Reed v. Gilbert* case and an overview of the areas of the code where he is recommending amendments. The Commission will have the opportunity to ask questions and provide initial feedback to staff.

NEXT STEPS

Staff will take the Commission's input at the May 19 meeting and incorporate it into a draft code amendment. The Commission will hold a public hearing and review the draft amendment at its June 16 meeting. Final deliberation on this amendment and a recommendation are planned for the July 21 meeting. It is anticipated that the Planning Commission's recommendation will be transmitted to City Council for review in the September-October timeframe.

ATTACHMENTS

1. Memo from Daniel Kenny

M E M O R A N D U M

DATE: May 12, 2021

TO: Mercer Island Planning Commission

FROM: Daniel P. Kenny

RE: Sign Code Revisions

In 2015, the United States Supreme Court issued a ruling (*Reed v. Town of Gilbert*) which changed the way sign codes are analyzed for First Amendment issues. As a result of the Supreme Court's ruling, municipalities across the United States are adjusting and/or rewriting their sign codes.

Summary of *Reed v. Town of Gilbert*

Reed v. Town of Gilbert is a United States Supreme Court case that addresses First Amendment issues in local sign codes.

This case centers on the City of Gilbert, Arizona's sign code, which prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here.

- "Ideological Signs," defined as signs "communicating a message or ideas for noncommercial purposes" that do not fit into other Sign Code categories, may be up to 20 square feet and have no placement or time restrictions.
- "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season.
- "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

Petitioners, Good News Community Church (Church), held Sunday church services at various temporary locations in and near the Gilbert. In order to identify the location for the current week's service, the Church posted temporary signs early each Saturday bearing the Church name and the time and location for the next day's service. The Church left the signs up from Saturday until around midday Sunday, the day of the service. The Church left the signs up for longer than 1 hour after the event and was cited for exceeding the time limits prescribed for "temporary directional signs." The Church filed suit claiming that the Code abridged their freedom of speech. The case was appealed up to the United States Supreme Court.

The Court held that the Gilbert sign provisions were content based on their face. This required the Court to consider whether a regulation of speech "on its face" draws distinctions based on the message the speaker provides. If the regulation of speech is content based on its face, then it is subject to strict scrutiny. Strict scrutiny is a level of judicial review that is rarely met and is therefore nearly always fatal.

Each of Gilbert’s sign code categories were defined based upon the message that the sign conveys. Consequently, those restrictions were subject to strict scrutiny.

The heightened scrutiny for content-based regulations extends not only to restrictions on particular viewpoints but also to prohibition of public discussion of an entire topic. Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.

Gilbert’s sign regulations failed to meet strict scrutiny and were held to be impermissible content-based regulations.

Basic Rule

The basic principle that should guide your review of your existing sign code is this: If a code enforcement officer must read the content of the sign to determine in which category the sign falls, and therefore which regulations apply, then the sign code regulation is content based on its face and is subject to strict scrutiny.

Mercer Island Sign Code

Similar to many jurisdictions across this country, the Mercer Island sign code has some provisions that should be altered to conform to *Reed v. Town of Gilbert*. Fortunately, the existing Mercer Island sign code relies less on content-based regulations as compared to Gilbert and other local Washington jurisdictions. Therefore, the goal would be to bring you revisions which are targeted as opposed to wholesale redrafting of the code.