

City of Federal Way
PLANNING COMMISSION

December 2, 2020, 6:30 p.m.

City Hall, Zoom Meeting

AGENDA

Notice: Pursuant to Governor Inslee's Proclamation 20-28, all in-person meetings are prohibited until further notice. The Mayor and City Council are providing opportunities for public comment by submitting written comment or calling into the meeting to provide oral testimony. To access these options please use the following:

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[Click Here](#) to submit written comments to the Planning Commission (we request you submit them at least 2 hours before the meeting starts); please reference Planning Commission Meeting – December 2nd



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Watch from the Zoom mobile app with meeting: 920 3994 8345 and password: 431768

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES
 - a. Planning Commission Meeting of November 4, 2020
4. PUBLIC COMMENT
5. COMMISSION BUSINESS
 - a. *Public Hearing* – Code Amendments to the FWRC Titles 4 and 19 Related to Wireless Communication Facilities
 - b. *Public Hearing* – Amendments to the Comprehensive Plan on Rezone/ Reclassification of a Residential Zone (Shelter Resources)
 - c. *Discussion* – Planning Commission 2021 Work Program
6. STAFF BUSINESS
 - a. Manager's Report
7. NEXT MEETING
 - a. December 18, 2020, 6:30 p.m.
8. ADJOURNMENT

Commissioners

Lawson Bronson, Chair
Wayne Carlson
Diana Noble-Gulliford
Dale Couture, Alternate

Tom Medhurst, Vice-Chair
Hope Elder
Tim O'Neil
Eric Olsen, Alternate

City Staff

Robert "Doc" Hansen, Principal Planner
E. Tina Piety, Administrative Assistant
253-835-2601

www.cityoffederalway.com

**CITY OF FEDERAL WAY
PLANNING COMMISSION**

November 4, 2020
6:30 p.m.

City Hall
Zoom

MEETING MINUTES

Commissioners present: Lawson Bronson, Tom Medhurst, Wayne Carlson, Diana Noble-Gulliford, Tim O’Neil, Dale Couture, and Eric Olsen. Commissioners absent: Hope Elder. City Staff present: Planning Manager Robert “Doc” Hansen, Public Works Director EJ Walsh, City Traffic Engineer Rick Perez, P.E., Senior Transportation Planning Engineer Sarady Long, Assistant City Attorney Eric Rhoades, and Administrative Assistant II Tina Piety. Fehr & Peers principals present: Project Manager Sarah Keenan, P.E. and Principal in Charge Kendra Breiland, AICP.

CALL TO ORDER

Chair Bronson called the meeting to order at 6:30 P.M.

MINUTES

The September 16, 2020, minutes were approved as presented.

PUBLIC COMMENT

None

COMMISSION BUSINESS

Public Hearing: Code Amendments to FWRC Chapter 19.91, Transportation Impact Fee – Engineer Perez introduced the staff report. Transportation impact fees are a one-time charge paid by new development. The funds are used for projects that add capacity to the transportation network. The funds may be used only for projects that serve new growth, not for existing deficiencies. The funds collected must be used within 10 years on public streets and roads that are in the capital facilities element of the comprehensive plan. Project Manager Keenan explained the proposed amendments. The proposed amendments will delete reference to the February 2009 transportation rate study and replace it with the November 2020 rate study performed by Fehr & Peers. Additionally, the amendments will incorporate language to comply with the Growth Management Act (GMA) and RCW requirements. It is proposed to amend FWRC Title 19 “Zoning and Development Code” Chapter 19.91, “Transportation Impact Fees.”

Discussion was held regarding the proposed fees increase. Commissioner Carlson *moved*, and Vice-Chair Medhurst *seconded*, to recommend approval of the proposed amendments as presented. There was no further discussion. The motion *passed* unanimously.

STAFF BUSINESS

- a. *Manager's Report* –None.

NEXT MEETING

November 16, 2020, 6:30 p.m., Zoom Meeting

ADJOURN

The meeting adjourned at 7:06 P.M.

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PLANNING COMMISSION PUBLIC HEARING STAFF REPORT

TO: Lawson Bronson, Federal Way Planning Commission Chair

FROM: *DSW* Desiree S Winkler, P.E., Deputy Public Works Director

DATE: November 23, 2020

SUBJECT: Amendments to the FWRC Chapters 4 and 19 related to
Wireless Telecommunication Facilities

I. FINANCIAL IMPACTS

The proposed code amendments will have no financial impacts on the city budget.

II. INTRODUCTION

The demand for wireless telecommunication bandwidth and services has grown exponentially in the past few years. Federal and state laws were adopted to facilitate rapid deployment of wireless telecommunication facilities to meet the growing demand. In response to these new federal and state laws, the city adopted code (both permanent and interim), to meet required timelines and design standards.

Ordinance 18-851 updated the following codes:

FWRC 4.24: New section added to address federal and state time limits (aka: “shot clocks”) for wireless telecommunication application review.

Ordinance 19-863 updated the following codes:

FWRC 4.22: Updated franchise application requirements and completeness determinations and identified timelines for review of telecommunication and small wireless facilities.

FWRC 4.23: New section addressing small wireless permitting.

FWRC 4.24: Updated timelines permitting new wireless communication facilities.

Ordinance 19-850 updated and added the following codes:

FWRC 19.05, 19.15, and 19.190: Modify definitions of wireless communication facilities and clarify approval processes over private property versus rights-of-way.

FWRC 19.256: (FWRC 19.255 repealed and replaced with 19.256) New section was added to address siting of wireless telecommunication facilities.

Ordinance 19-862, 20-883, 20-890: implemented the following interim code amendments:

FWRC 19.256: Implements standards and timelines (aka. “shot clocks”) for review of applications for wireless communication facilities and establishes design and aesthetic standards for small wireless deployments.

The above regulations stemmed from the Regulatory Ruling, Order, and Regulation 85 FCC 51867 (“FCC Order”) imposes limitations on the processing of all permits associated with the deployment of small wireless facilities. The FCC Order was subject to multiple appeals, which were consolidated before the Federal Ninth Circuit Court of Appeals. Oral argument for this matter was heard in February 2020 with the Declaratory Ruling and Notice of Proposed Rulemaking (“FCC Rules”) issued in June 10, 2020. The city extended the interim codes to provide enough time to review the FCC Rules and amend city code accordingly.

III. PROPOSED AMENDMENTS

The draft proposed code amendments are attached as Exhibit A. The proposed amendments will mainly establish wireless communication facility permitting and design standards and reorganize the code to consolidate all wireless facility standards into one chapter.

1. FWRC 4.22 Franchise for Use of Right-of-Way:
 - a. Removed Section 4.22.060: redundant section referring to application review timelines now outlined in Section 19.256.
2. FWRC 4.23 Small Wireless Deployment – Small Wireless Permits:
 - a. Refers to the small wireless requirements outlined in Section 19.256.
3. FWRC 4.24 Eligible Facilities Requests:
 - a. Refers to the eligible facilities request requirements outlined in Section 19.257.
4. FWRC 19.256: deleted and replaced. Consolidated all zoning, permitting, and design standards for small wireless and major facilities located within rights-of-way and real property.
5. FWRC 19.257: New section for Eligible Facility Requests. Covers major and small wireless facilities within rights-of-way and real property.

IV. TIMELINE

The anticipated timeline for completion of the code amendment process is as follows:

Planning Commission Public Hearing	12/02/2020
LUTC Review	12/07/2020
Council First Reading	1/05/2021
Council Second Reading and Enactment	1/19/2021

V. PUBLIC COMMENTS

No public comments have been received regarding this proposal as of November 23, 2020. Any comments received since this time will be submitted into the record for City Council review.

VI. REASON FOR PLANNING COMMISSION ACTION

FWRC Title 19, “Zoning and Development Code,” Chapter 19.80, “Process VI Review,” establishes a process and criteria for development regulation amendments. Consistent with Process VI review, the role of the Planning Commission is as follows:

1. To review and evaluate the proposed development regulation amendments.
2. To determine whether the proposed development regulation amendment meets the criteria provided by FWRC 19.80.130 (item VII below).
3. To forward a recommendation to City Council regarding adoption of the proposed development regulation amendment.

VII. DECISIONAL CRITERIA

FWRC 19.80.130 provides criteria for development regulation amendments. The following section analyzes the compliance of the proposed amendments with the criteria provided by FWRC 19.80.130. The city may amend the text of the FWRC only if it finds that:

1. The proposed amendment is consistent with the applicable provisions of the comprehensive plan.

Staff Response – The proposed code amendment is consistent with the following goals and policies:

PUG1 Work with private utility companies to allow them to provide full and timely service that meets the needs of the City’s residents and businesses, both present and future.

PUG2 Work with private utility companies to allow them to provide service in a way that balances cost-effectiveness with environmental protection, aesthetic impact, public safety, and public health.

PUP16 The City should require site-specific utility facilities such as antennas and substations be reasonably and appropriately sited and screened to mitigate adverse aesthetic impacts.

PUP17 Through its development regulations, the City shall continue to address the siting, screening, and design standards for wireless/cellular facilities, substations, and antenna facilities in such a manner as to allow for reasonable and predictable review while minimizing potential land use and visual impacts on adjacent property.

2. The proposed amendment bears a substantial relationship to public health, safety, or welfare.

Staff Response – The proposed code amendment bears substantial relationship to public health, safety, and welfare as it seeks to ensure development of wireless communication facilities within current health and safety standards.

3. The proposed amendment is in the best interest of the residents of the city.

Staff Response – The proposed amendment is in the best interest of the residents of the city as its intent is to ensure availability of wireless telecommunication infrastructure while protecting public health and maintaining aesthetic standards.

PLANNING COMMISSION ACTION

The Mayor recommends adopting the proposed ordinance amending Title 4 and Title 19 of the *Federal Way Revised Code* (FWRC) as shown in Exhibit A. Consistent with the provisions of FWRC 19.80.240, the Planning Commission may take the following actions regarding the proposed regulation amendments:

1. Recommend to City Council adoption of the FWRC text amendments as proposed;
2. Modify the proposed FWRC text amendments and recommend to City Council adoption of the FWRC text amendments as modified;
3. Recommend to City Council that the proposed FWRC text amendments not be adopted; or
4. Forward the proposed FWRC text amendments to City Council without a recommendation.

Exhibit A: Proposed Code Amendments to FWRC Chapter 4 and Chapter 19

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE of the City of Federal Way, Washington, relating to wireless communication facilities; repealing and replacing Federal Way Revised Code Chapters 4.23 (Small Wireless Deployment), 4.24 (Eligible Facilities Requests), and 19.256 (Wireless Communications Facilities) in their entirety; revising Chapter 4.22 (Franchise for Use of Right-of-Way); and adding new Chapter 19.257 (Eligible Facilities Requests). (Repealing Ordinance No. 20-890, 20-833, 19-862, and 18-850 and amending Ordinance Nos. 17-833, 18-863, and 18-851)

WHEREAS, in a constantly evolving industry, telecommunications providers are beginning to utilize a new type of technology commonly known as “small cell” facilities (herein “small wireless facilities”) to implement higher bandwidths and increased demands for data; and

WHEREAS, the Federal Communications Commission (“FCC”) has issued rules and regulations which limit local government’s ability to regulate the deployment of small wireless facilities, but which allows local governments to adopt regulations affecting the aesthetics and design standards for small wireless facilities; and

WHEREAS, Chapter 19.256 of the Federal Way Revised Code (“FWRC”) was added to Title 19 FWRC pursuant to Ordinance No. 18-850 and established initial regulations related to wireless facilities; and

WHEREAS, Chapter 19.256 FWRC was amended pursuant to Ordinance No. 19-862 to incorporate interim zoning and design regulations regarding small wireless facilities, and these interim regulations were renewed pursuant to Ordinance 20-883 and Ordinance No. 20-890; and

WHEREAS, the City has evaluated its existing wireless facilities regulations which govern macro wireless facilities as set forth in Chapter 19.256 FWRC and eligible facilities requests set forth in Chapter 4.24 FWRC, and determined that changes are needed to address compliance with FCC rules; and

WHEREAS, the City desires to repeal the entirety of the existing Chapter 19.256 FWRC and replace it with a new Chapter 19.256 that (1) reaffirms the land use and zoning regulations for macro wireless facilities, (2) clarifies the application and review process for macro wireless facilities, (3) adopts land use and zoning regulations and design standards for small wireless facilities and, (4) sets forth the application and approval process for small wireless facilities; and

WHEREAS, the City desires to add a new Chapter 19.257 FWRC establishing a consolidated chapter for all regulations related to Eligible Facilities Requests as prescribed by federal rules and regulations; and

EXHIBIT A

WHEREAS, upon timely notice, the City undertook a State Environmental Policy Act (SEPA) review of these wireless communication regulations and issued a Determination of Non-Significance for this non-project action; and

WHEREAS, the Washington State Department of Commerce was provided a Notice of Intent to Adopt the proposed regulations and the City received no comments on the same; and

WHEREAS, the proposed regulations went before the City of Federal Way Planning Commission for review, discussion, and consideration. Upon timely notice, a public hearing was held before the Planning Commission on December 2, 2020 and subsequently, the Planning Commission issued a recommendation that the City Council adopt the regulations; and

WHEREAS, the based on careful consideration of the facts and law, including without limitation the public testimony received, the Planning Commission's recommendation dated December 2, 2020, the Staff Report dated November 23, 2020, and records and files with the office of the City Clerk, the Federal Way City Council finds that the proposed amendments attached and incorporated herein should be approved as presented.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The Federal Way City Council finds as follows:

A. The above recitals set forth as “WHEREAS” clauses are hereby adopted as findings of fact in support of the adoption of this Ordinance.

B. The amendments that are incorporated herein comply with the requirements of the Washington State Growth Management Act and the City of Federal Way’s municipal code.

Section 2. Section 19.256 approved through Ordinance 18-850 by City Council on July 18, 2018 and associated interim amendments approved through Ordinance Nos. 19-862, 20-883, and 20-890 approved by City Council on January 9, 2019, January 21, 2020 and July 21, 2020 respectively and which established wireless communication facilities regulations are hereby repealed in their entirety and replaced as set forth herein.

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Section 3. Chapter 4.22 of the Federal Way Revised Code is hereby amended by the removal of section 4.22.060.

Section 4. Chapter 4.23 of the Federal Way Revised Code is hereby repealed and replaced as follows:

Chapter 4.23 – Small Wireless Facilities located on City Property

4.23.010 Applicability.

Small wireless facilities, defined by FRWC 19.256.020, proposed to be located in the public right-of-way or on publicly owned property are subject to the requirements established in Chapter 19.256 FWRC.

Section 5. Chapter 4.24 of the Federal Way Revised Code is hereby repealed and replaced as follows:

Chapter 4.24 – Eligible Facilities Requests located on City Property

4.24.010 Applicability.

Eligible Facilities Requests, defined by FWRC 19.257.020(1)(c), related to an existing tower or base station located in the public right-of-way or on publicly owned property are subject to the requirements established in Chapter 19.257 FWRC.

Section 6. Chapter 19.256 of the Federal Way Revised Code is hereby repealed and replaced as follows:

Chapter 19.256
WIRELESS COMMUNICATION FACILITIES

Sections:

- 19.256.010 Purpose and Scope.
- 19.256.020 Exemptions.
- 19.256.030 Definitions.
- 19.256.040 Federal regulatory requirements.
- 19.256.050 Small wireless facility application process.

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19.256.060	Small wireless facility application requirements.
19.256.070	Small wireless facility review criteria and process.
19.256.080	Small wireless facility permit requirements.
19.256.090	Small wireless facility modification.
19.256.100	Small wireless facility aesthetic, concealment, and design standards.
19.256.110	Designated design zones for small wireless facilities.
19.256.120	Major wireless communication facility application and review process.
19.256.130	Major wireless communication facility application requirements.
19.256.140	Prioritized locations for major wireless communication facilities.
19.256.150	Major wireless communication facility development standards.
19.256.160	Expiration of major wireless communication facility permit.
19.256.170	Nonconformance exceptions.
19.256.180	Temporary wireless communication facilities.
19.256.190	Collocation.
19.256.200	Removal of facility.
19.256.210	Revocation of permit.

19.256.010 Purpose and Scope.

The purpose of this chapter, in addition to implementing the general purposes of the comprehensive plan and development regulations, is to regulate the activities of permitting, placement, construction and modification of wireless communication facilities in order to protect the health, safety and welfare of the public while not unreasonably interfering with the development of a competitive wireless telecommunications marketplace within the city.

This chapter provides permitting and review regulations as well as aesthetic, design and concealment standards for the construction of wireless communication facilities both within and without the public right-of-way. It also provides siting options at appropriate locations within the city to support existing communications technologies, to adapt to new technologies as needed, and to minimize associated safety hazards and visual impacts. The siting of wireless communication facilities on existing buildings and structures, collocation of telecommunication facilities on a single support structure and visual mitigation strategies are encouraged to preserve neighborhood aesthetics and reduce visual clutter in the city.

19.256.020 Exemptions.

(1) Exemptions. The following antennas and facilities are exempt from the provisions of this chapter and shall be permitted in all zones consistent with the applicable development standards outlined in the use zone charts, FWRC Title 19, Division VI, Zoning Regulations:

(a) WCFs used by federal, state, or local public agencies for temporary emergency communications in the event of a disaster, or emergency preparedness, and for any other public health or safety purpose, including, by way of illustration and not limitation, any communications systems utilized by first responders such as police or fire.

(b) Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC; provided such equipment complies with all applicable provisions of FWRC 19.110.050, Compliance generally; 19.110.060, Exceptions; and 19.110.070, Rooftop appurtenances – Required screening.

(c) Citizen band radios or antennas operated by federal licensing amateur (“ham”) radio operators; provided such antennas comply with all applicable provisions of FWRC 19.110.050, Compliance generally, 19.110.060, Exceptions, and 19.110.070, Rooftop appurtenances – Required screening.

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(d) Satellite dish antennas less than two meters in diameter, including direct-to-home satellite services, when used as secondary use of the property; provided such antennas comply with all applicable provisions of FWRC 19.110.050; Compliance generally; 19.110.060, Exceptions; and 19.110.070, Rooftop appurtenances – Required screening.

(e) Automated meter reading (“AMR”) facilities for collecting utility meter data for use in the sale of utility services, except for WIP and other antennas greater than two feet in length; so long as the AMR facilities are within the scope of activities permitted under a valid franchise agreement between the utility service provider and the city.

(f) Eligible facilities requests and routine maintenance or repair of a WCF and related equipment excluding structural work or changes in height, dimension, or visual impacts of the antenna, tower, transmission equipment, equipment cabinet and/or transmission equipment; provided, however, that compliance with the standards of this title is maintained. See Chapter 19.257 FWRC for regulations related to eligible facilities requests.

19.256.030 Definitions.

For the purposes of this chapter as well as Chapters 4.23 FWRC, the following terms shall have the meaning ascribed to them below. Terms not defined in this section shall be defined as set forth in Chapter 19.05 FWRC:

“Antenna(s)” in the context of small wireless and wireless communication facilities and consistent with 47 CFR 1.1320(w) and 1.6002(b) means an apparatus designed for the purpose of emitting radiofrequency (“RF”) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission (“FCC”) authorization, for the provision of personal wireless and any commingled information services. For the purposes of this definition, the term “antenna” does not include an unintentional radiator, mobile station, or device authorized by 47 CFR Title 15.

“Antenna equipment,” consistent with 47 CFR 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, are mounted or installed at the same time as the antenna.

“Antenna facility” means an antenna and associated antenna equipment.

“Antenna height” means the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater.

“Collocation”

(a) “Collocation” is further defined in FWRC 19.05.030 in the application of the provisions of this title.

(b) When used in the context of small wireless facilities issued pursuant to this Chapter 19.256 FWRC, “collocation” means:

(i) Mounting or installing an antenna facility on a preexisting structure; and/or

(ii) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

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“Concealment elements” means transmission facilities designed to look like some feature other than a wireless tower or base station or which minimizes the visual impact of the facilities by use of nonreflective materials, appropriate colors, and/or a concealment canister.

“Director” means the Public Works Director or designee.

“Equipment enclosure” means a facility, shelter, cabinet, or vault used to house and protect electronic or other associated equipment necessary for processing wireless communication signals. “Associated equipment” may include, for example, air conditioning, backup power supplies, and emergency generators.

“Existing” means a constructed tower or structure if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process; provided, that a tower that has not been reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

“FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Major wireless communication facilities” or “Major WCF” means all facilities other than small wireless facilities as defined pursuant to this Chapter and eligible facilities requests subject to Chapter 19.257 FWRC. Major WFC include but are not limited to monopoles, lattice towers, micro and macro cells, roof-mounted and panel antennas, and other similar facilities.

“Personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

“Service provider” shall be defined in accord with RCW 35.99.010(6). “Service provider” shall include those infrastructure companies that provide telecommunications services or equipment to enable the construction of wireless communications.

“Small wireless facility” shall be defined as provided in 47 CFR 1.6002(l).

“Structure” when used in the context of a small wireless facility 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 (on its own or commingled with other types of services).

“Technologically infeasible” means the inability of a wireless communication facility to operate.

“Telecommunications service” shall be defined in accord with RCW 35.99.010.

“Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communication 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” means any structure designed and used primarily for support of traffic signal displays and equipment whether for vehicular or nonmotorized users.

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“Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communication 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.

“Utility pole” means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, or lighting for streets, parking lots, or pedestrian paths.

“Wireless communication facilities” or “WCF” means facilities used for personal wireless services.

19.256.040 Federal regulatory requirements.

(1) These provisions shall be interpreted and applied in order to comply with the provisions of federal law. By way of illustration and not limitation, any WCF that has been certified as compliant with all FCC and other government regulations regarding the human exposure to radio frequency emissions will not be denied on the basis of RF radiation concerns.

(2) WCFs shall be subject to the requirements of this Code to the extent that such requirements:

- (a) Do not unreasonably discriminate among providers of functionally equivalent services; and
- (b) Do not have the effect of prohibiting wireless communications facilities within the city.

19.256.050 Small wireless facility application process.

(1) Applicability. Any application for a small wireless facility both inside and outside of the right-of-way shall comply with the application requirements for a small wireless facility permit described in this chapter. For small wireless facilities inside the right-of-way, the applicant must also comply with the requirements pursuant to Chapter 4.22 FWRC. The small wireless facility permits are issued by the Director.

(2) Completeness. An application for a small wireless facility is not complete until the applicant has submitted all the applicable items required by FWRC 19.256.060 and has submitted complete applications for all the applicable items in FWRC 19.256.050(3) and the city has confirmed that the application is complete. Any and all parts of an application for small wireless facilities including but not limited to franchise, small wireless permits, and all associated permits shall be submitted at one time in order that their completeness may be considered, however an applicant may utilize phased deployment. An applicant seeking to phase deployment of a small wireless facilities system shall identify the intended phasing in the franchise application process. Franchisees with a valid franchise for small wireless facilities may apply for a small wireless permit for the initial or additional phases of a small wireless facilities system at any time subject to the commencement of a new completeness review time period for permit processing.

(3) Application Components. The Director is authorized to establish franchise and other application forms to gather the information required to evaluate the application from applicants and to determine the completeness of the application as provided herein. The application shall include the following components as applicable:

- (a) Franchise. If any portion of the applicant’s facilities are to be located in the right-of-way, the applicant shall apply for, and receive approval of a franchise, consistent with the requirements in Chapter 4.22 FWRC

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(b) Small Wireless Facility Permits. The applicant shall submit a SWF permit application as required in the small wireless facility application requirements established in FWRC 19.256.060. Prior to the issuance of a small wireless facility permit, the applicant shall pay a permit fee as set forth in the fee schedule which may be amended by City Council from time to time.

(c) Associated Application(s) and Checklist(s). The applicant shall attach all associated applications or checklists such as those required under the critical areas or SEPA ordinances. Applications for small wireless facilities in design zones or for new poles shall comply with the requirements in FWRC 19.256.100(5).

(d) Leases. An applicant who desires to attach a small wireless facility on any utility pole, light pole, or other structure or building owned by the city shall include an application for a lease as a component of its application. Leases for utility poles or light pole and the use of other public property, structures or facilities, including but not limited to any park land or facility, require city council approval.

19.256.060 Small wireless facility application requirements.

The following information shall be provided by all applicants for a small wireless permit.

(1) The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. The applicant shall specify ground-mounted equipment, conduit, junction boxes and fiber and power connections necessary for and intended for use in the small wireless facilities system regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. The applicant shall provide detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards. The application shall have sufficient detail to identify:

(a) The location of overhead and underground public utilities, telecommunication, cable, water, adjacent lighting, sewer drainage and other lines and equipment within 50 feet of the proposed project area (which the project area shall include the location of the signal source and power source). Further, the applicant shall include all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 50 feet of the proposed project area.

(b) The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction. The applicant is discouraged from trimming, removing or replacing trees, and if any such tree modifications are proposed the applicant must comply with applicable provisions of Chapter 19.120 FWRC and Chapter 4.35 FWRC.

(c) The applicant's plan for signal and power service, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small cell facility, to the extent to which the applicant is responsible for installing such signal and power service, conduits, cables, and related improvements. Where another party is responsible for installing such signal and power service, conduits, cables, and related improvements, applicant's construction drawings shall include such utilities to the extent known at the time of application, but at

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a minimum applicant must indicate how it expects to obtain power and signal service to the small cell facility.

(d) A photometric analysis of the roadway and sidewalk within 150 feet of the existing light if the site location includes a replacement light pole.

(e) Compliance with the applicable aesthetic requirements pursuant to FWRC 19.256.100.

(2) The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. Such written approval shall include approval of the specific pole, engineering and design specifications for the pole, as well as assurances that the specific pole can withstand wind and seismic loads, from the pole owner, unless the pole owner is the city. For city-owned poles or structures, the applicant shall obtain a lease from the city prior to or concurrent with the small wireless permit application so that the city can evaluate the use of a specific pole.

(3) The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.

(4) Any application for a small wireless permit which contains an element which is not categorically exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Title 14 FWRC. Further, any application proposing small wireless facilities in a shoreline area (pursuant to Chapter 15.05 FWRC) or a critical area (pursuant to Chapter 19.145 FWRC) shall indicate why the application is exempt or comply with the review processes in such codes.

(5) The applicant shall submit a sworn affidavit signed by an RF engineer with knowledge of the proposed project affirming that the small wireless facilities will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small wireless facility will operate. If facilities which generate RF radiation necessary to the small wireless facility are to be provided by a third party, then the small wireless permit shall be conditioned on an RF certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small wireless facilities system if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.

(6) The applicant shall provide proof of FCC or other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

(7) A professional engineer licensed by the state of Washington shall certify in writing, over his or her seal, that construction plans of the small wireless facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads as required by applicable codes.

(8) A right-of-way work permit application as required by FWRC 4.25.030.

(9) Proof of a valid Federal Way business license.

(10) Recognizing that small wireless facility technology is rapidly evolving, the Director is authorized to adopt and publish standards for the technological and structural safety of city-owned structures and to formulate and publish application questions for use when an applicant seeks to attach to city-owned structures.

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(11) Such other information as the Director, in his/her discretion, shall deem appropriate to effectively evaluate the application based on technical, engineering and aesthetic considerations.

19.256.070 Small wireless facility review criteria and process.

(1) The following provisions relate to review of applications for a small wireless facility permit:

(a) In any zone, upon application for a small wireless permit, the city will permit small wireless facilities only when the application meets the criteria of this Chapter 19.256 FWRC.

(b) Vertical clearance shall be reviewed by the Director to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-way.

(c) Replacement poles, new poles, and ground-mounted equipment permitted pursuant to FWRC 19.256.100(1)(b) shall comply with the Americans with Disabilities Act (ADA), city construction and sidewalk clearance standards, traffic warrants, city ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within the right-of-way. Further, the location of any replacement pole, new pole, or ground-mounted equipment must: be physically possible, cannot obstruct vehicular or pedestrian traffic or the clear zone, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

(d) No equipment shall be operated so as to produce noise in violation of Chapter 7.10 FWRC.

(e) Small wireless facilities may not encroach onto or over private property or property outside of the right-of-way without the property owner's express written consent.

(2) Decision. All small wireless facility applications shall be reviewed and approved or denied by the Director. The Director's decision shall be final and is not subject to appeal under city code or further review by the city.

(3) Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 332 and other applicable statutes, regulations and case law. Applicants for franchises and small wireless facility permits shall be treated in a competitively neutral and nondiscriminatory manner with other service providers, utilizing supporting infrastructure which is functionally equivalent; that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

(4) Eligible Facilities Requests. The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded upon an eligible facilities request described in Chapter 19.257 FWRC when the modification does not defeat the concealment elements of the small wireless facility.

(5) Public Notice. The city shall provide notice of a complete application for a small wireless permit on the city's website with a link to the application. The applicant shall provide an email contact and telephone number to include in the notice so the applicant can respond to citizen inquiries. Applicants shall also provide this notice to all residents and businesses within 100 feet of any proposed small wireless facility via a doorhanger. Notice is for the public's information and is not a part of a hearing or part of the land use appeal process.

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(6) **Withdrawal.** Any applicant may withdraw an application submitted at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or their successors in interest. When a withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs prior to the Director's decision, then reimbursement of fees submitted in association with said application shall be reduced to withhold the amount of city costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Director's decision, there shall be no refund of all or any portion of such fee.

(7) **Supplemental Information.** Failure of an applicant to provide supplemental information as requested by the Director within 60 days of notice by the Director shall be grounds for denial of that application unless an extension period has been approved by the Director. If no extension period has been approved by the Director, the Director shall notify the applicant in writing that the application is denied.

19.256.080 Small wireless facility permit requirements.

(1) **Permit Compliance.** The permittee shall comply with all of the requirements within the small wireless facility permit.

(2) **Post-Construction As-Builts.** Upon request, the permittee shall provide the city with as-builts of the small wireless facilities, within 30 days after construction of the small wireless facility, demonstrating compliance with the permit, visual renderings submitted with the permit application and any site photographs taken.

(3) **Construction Time limit.** Construction of the small wireless facility must be completed within 12 months after the approval date by the city. The permittee may request one extension of no more than six months, if the permittee provides an explanation as to why the small wireless facility cannot be constructed within the original 12-month period.

(4) **Site Safety and Maintenance.** The permittee must maintain the small wireless facilities in safe and working condition. The permittee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

(5) **Operational Activity.** The permittee shall commence operation of the small wireless facility no later than six months after installation. The permittee may request one extension for an additional six-month period if the permittee can show that such operational activity is delayed due to inability to connect to electrical or backhaul facilities.

19.256.090 Small wireless facility modification.

(1) If a permittee desires to modify small wireless facilities, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the permittee shall apply for a new small wireless permit.

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

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small wireless facilities. An annual blanket right-of-way permit will be required for such routine maintenance, repair, or replacement and can cover all facilities owned by the applicant.

19.256.100 Small wireless facility aesthetic, concealment, and design standards.

(1) All small wireless facilities shall conform with the following general aesthetic, concealment, and design standards, as applicable:

(a) Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use in residential zones.

(b) 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 technically infeasible. If ground-mounted equipment is necessary, then the applicant shall submit a concealment element plan substantially conforming to the applicable standards in FWRC 19.256.100(5)(c) and comply with the Americans with Disabilities Act (“ADA”), city construction standards, and state and federal regulations in order to provide a clear and safe passage within the public right-of-way. Generators located in the rights-of-way are prohibited.

(c) No equipment shall be operated so as to produce noise in violation of Chapter 7.10 FWRC.

(d) 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 or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than four by six inches); provided, that signs are permitted as concealment element techniques where appropriate.

(e) Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of the required concealment element requirements pursuant to FWRC 19.256.100(5)(c) of this chapter.

(f) Antennas, equipment enclosures, and ancillary equipment, conduit and cable shall not dominate the structure or pole upon which they are attached.

(g) The design standards in this Chapter are intended to be used solely for the purpose of concealment and siting. Nothing contained in this chapter shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would render the small wireless facility technologically infeasible, alternative forms of aesthetic design or concealment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

(2) General Pole Standards. In addition to complying with the general standards in FWRC 19.256.100(1), all small wireless facilities on any type of pole shall conform to the following general pole design requirements as well as the applicable pole specific standards:

(a) The preferred location of a small wireless facility on a pole is the location with the least visible impact.

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(b) The city may consider the cumulative visual effects of small wireless facilities mounted on poles 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 neither be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.

(c) Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC 253 and 332.

(d) Replacement poles and new poles shall comply with the Americans with Disabilities Act, city construction and sidewalk clearance standards, city development standards, city ordinances, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

(e) Replacement poles shall be located as near as possible to the existing pole and the abandoned pole shall be removed.

(f) Side arm mounts for antennas or equipment must be the minimum extension necessary, and for wooden poles may be no more than 12 inches off the pole, and for nonwooden poles no more than six inches off the pole.

(3) Nonwooden Pole Design Standards. In addition to complying with the general standards in FWRC 19.256.100(1) and FWRC 19.256.100(2), small wireless facilities attached to existing or replacement nonwooden poles in the right-of-way or nonwooden poles outside of the right-of-way shall conform to the following design criteria:

(a) Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is technically infeasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush-mounted to the pole, meaning no more than 6 inches off of the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole; provided, that such location does not interfere with the operation of the banners or signs.

For purposes of this section, "incompatible with the pole design" may include a demonstration by the applicant that the visual impact to the pole or the streetscape would be reduced by placing the antennas and equipment exterior to the pole.

(b) The farthest point of any antenna or equipment enclosure may not extend more than 20 inches from the face of the pole.

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(c) All conduit, cables, wires, and fiber must be routed internally in the pole. Full concealment of all conduit, cables, wires, and fiber is required within mounting brackets, shrouds, canisters, or sleeves if attaching to exterior antennas or equipment.

(d) 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 12 inches, 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 or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. 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.

(e) Any replacement pole shall substantially conform to the design of the pole it is replacing (including but not limited to color, shape and style) or the neighboring pole design standards utilized within the contiguous right-of-way.

(f) 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; provided, that the height of the replacement pole cannot be extended further by additional antenna height.

(g) The diameter of a replacement pole shall comply with the city's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25 percent increase of the existing pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection (5)(c) of this section.

(h) The use of the pole for the siting of a small wireless 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 facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

(4) Wooden pole design standards. In addition to complying with the general standards in FWRC 19.256.100(1) and FWRC 19.256.100(2), small wireless facilities attached to existing or replacement wooden light poles and other wooden poles in the inside or outside the right-of-way shall conform to the following design criteria:

(a) The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that 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 that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.

(b) 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 10 feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A "pole extender" as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of

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the antenna above the pole. 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.

(c) Replacement wooden poles must 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.

(d) The diameter of a replacement pole shall comply with the city's setback and sidewalk clearance requirements and shall not be more than a 25 percent increase of the existing utility pole measured at the base of the pole.

(e) All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small wireless facility.

(f) Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.

(g) Antennas shall not be mounted more than 12 inches from the surface of the wooden pole.

(h) 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.

(i) A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection (4)(a) of this section. A canister antenna mounted on the top of a wooden pole shall not exceed 16 inches, measured at the top of the pole, and 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.

(j) The farthest point of any antenna or equipment enclosure may not extend more than 20 inches from the face of the pole.

(k) 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 technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

(l) 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.

(m) Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (4)(a) of this section. The equipment must be

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placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna, and any preexisting associated equipment on the pole, may not exceed 28 cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and do not cumulatively exceed 28 cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole; provided, that such location does not interfere with the operation of the banners or signs.

(n) An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so; provided, that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any preexisting associated equipment on the pole does not exceed 28 cubic feet. The unified enclosure may not be placed more than six inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs; provided, that such location does not interfere with the operation of the banners or signs.

(o) The visual effect of the small wireless facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.

(p) The use of the wooden pole for the siting of a small wireless 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 facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

(5) Small wireless facilities on new poles in the rights-of-way or in a design zone. In addition to complying with the general standards in FWRC 19.256.100(1) and FWRC 19.256.100(2), small wireless facilities proposed to be attached to new poles or in a design zone shall comply with following:

(a) New poles within the rights-of-way are only permitted if the applicant can establish that:

(i) The proposed small wireless 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;

(ii) The proposed small wireless facility receives approval for a concealment element design, as described in this section;

(iii) The proposed small wireless facility also complies with Shoreline Management Act, Growth Management Act, and State Environmental Policy Act, if applicable; and

(iv) No new poles shall be located in a critical area or associated buffer required by the city's environmentally critical areas ordinance, Chapter 19.145 FWRC, except when determined to be exempt pursuant to said ordinance.

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(b) An application for a new pole is subject to administrative review by the Director.

(c) All new poles shall conform to the city's standard pole design established in the city's public works development standards. If no existing metered service is available, the applicant shall provide new metered electrical service. If the city's standard pole design is technically infeasible, the new pole shall meet the following:

(i) The concealment element design shall include the design of the screening, fencing, or other concealment technology for a tower, pole, or equipment enclosure, and all related transmission equipment or facilities associated with the proposed small wireless facility, including but not limited to fiber and power connections.

(ii) The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights-of-way, including similar height to the extent technically feasible. If the proposed small wireless facility is placed on a replacement pole in a design district, then the replacement pole shall be of the same general design as the pole it is replacing, unless the Director otherwise approves a variation due to aesthetic or safety concerns. Any concealment element design for a small wireless facility on a decorative pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the decorative pole. 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 within the structure. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to this section.

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

(iv) Even if an alternative location is established pursuant to subsection (4)(a)(i) of this section, the Director may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the city, the concealment element design, the city's comprehensive plan and the added benefits to the community.

(v) Prior to the issuance of a permit to construct a new pole or ground-mounted equipment in the right-of-way, the applicant must obtain a master lease agreement from the city to locate such new pole or ground-mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and when the overall height of the replacement pole and the proposed small wireless facility is more than 60 feet.

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(vi) 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 that 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 aesthetic design or concealment may be permitted that provide similar or greater protections of the streetscape.

(6) Small wireless facilities attached to cables. In addition to complying with the applicable general standards in FWRC 19.256.100(1), all small wireless facilities mounted on existing cables strung between existing utility poles shall conform to the following standards:

- (a) Each strand-mounted facility shall not exceed three cubic feet in volume;
- (b) Only one strand-mounted facility is permitted per cable between any two existing poles on an existing cable;
- (c) The strand-mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five feet from the pole unless that location is technologically infeasible or is not allowed by the pole owner for safety clearance;
- (d) No strand-mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
- (e) Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in preexisting equipment cabinets; and
- (f) Pole-mounted equipment shall comply with the requirements of subsections (a) and (b) of this section.
- (g) Such strand-mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).

(7) Small wireless facilities attached to existing buildings. In addition to complying with the applicable general standards in FWRC 19.256.100(1), all small wireless facilities attached to existing buildings shall conform to the following design criteria:

- (a) Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
- (b) The interruption of architectural lines or horizontal or vertical reveals is discouraged.
- (c) New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.
- (d) Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.

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(e) 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. Exposed cabling/wiring is prohibited.

(f) Small wireless facilities shall be painted and textured to match the adjacent building surfaces.

19.256.110 Designated design zones for small wireless facilities.

Design zones. The following zones are designated as design zones for the purpose of the application of the provisions of this chapter:

- (1) City center core (CC-C);
- (2) City center frame (CC-F);
- (3) Designated landmark districts.

19.256.120 Major wireless communication facility application and review process.

(1) Application. Upon receipt of a complete application for a major wireless communication facility, the application shall be processed as a Process II applications. See Chapter 19.60 FWRC.

(2) Public Notice. The city shall provide notice of a complete application for a small wireless permit on the city's website with a link to the application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. Applicants shall also provide this notice to all residents and businesses within 100 feet of any proposed major WCF via a doorhanger. Notice is for the public's information and is not a part of a hearing or part of the land use appeal process.

(3) Review. The Director shall review the application for conformance with the application requirements and review criteria to determine whether the application is consistent with this chapter.

(4) Decision. A permit may be granted, granted with conditions pursuant to this chapter and the code, or denied. Any condition reasonably required to enable the proposed use to meet the standards of this chapter and code may be imposed. If the application cannot meet the standards of this chapter through the imposition of reasonable conditions, the application shall be denied.

19.256.130 Major wireless communication facility application requirements.

(1) Permit applications for major WCFs, excluding temporary major WCFs, shall include the following minimum information in addition to that required for the underlying permit review process:

- (a) A diagram or map showing the primary viewshed of the proposed facility.
- (b) Photo simulations of the proposed facility from affected properties and public rights-of-way at varying distances. These photo simulations should include examples of camouflage and stealth installation options.
- (c) Architectural elevations of proposed facility and site.
- (d) A coverage chart of the proposed major WCF at the requested height and an explanation of the need for that facility at that height and in that location.

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(e) An inventory of other major WCF sites operated by the applicant and all other service providers within a half-mile radius of the proposed major WCF location.

(f) A site/landscaping plan showing the specific placement of the major WCF on the site; showing the location of existing structures, trees, and other significant site features; and indicating type and locations of plant materials used to screen WCF components.

(g) If the major WCF electronic equipment cabinet is proposed to be located above ground, an explanation of why it is impracticable to locate the cabinet underground.

(h) Documentation of efforts to collocate on existing facilities.

(i) In proposing a major WCF in a particular location, the applicant shall analyze the feasibility of locating the proposed major WCF in each of the higher priority locations and document, to the city's satisfaction, why locating the major WCF in each higher priority location and/or zone is not being proposed

(j) The city may require the applicant, at the applicant's expense, to provide any additional information, mapping, studies, materials, inspections, or reviews that are reasonably necessary to implement this chapter and to require that such information, studies, mapping, materials, inspections, and reviews be reviewed by a qualified professional under contract to the city, also at the applicant's expense.

(2) Permit applications for temporary WCFs shall include the following minimum information:

(a) Documentation of previously permitted facility, if applicable.

(b) Site plan showing proposed location of temporary WCF in relationship to the location of the previously permitted facility and property boundaries, including dimensions from the property lines and height of proposed facility.

19.256.140 Prioritized locations for major wireless communication facilities.

The following sites shall be the required order of location for proposed major WCFs, including antenna and equipment enclosures. In order of preference, the prioritized locations for major WCFs are as follows:

(1) Structures located in the BPA transmission easement. A major WCF may be located on any existing support structure currently located in the easement upon which are located U.S. Department of Energy/Bonneville Power Administration ("BPA") power lines regardless of underlying zoning.

(2) Existing broadcast, relay, and transmission towers. A major WCF may be located on an existing site or tower where a legal WCF is currently located regardless of underlying zoning. If an existing site or tower is located within a half-mile radius of a proposed major WCF location, the applicant shall document why collocation on the existing site or tower is not being proposed, regardless of whether the existing site or tower is located within the jurisdiction of the city.

(3) Institutional structures. If the city, institutional uses, or other public agency consents to such location, a major WCF may be located on existing structures, such as water towers, utility structures, fire stations, bridges,

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churches, schools, and other public buildings within all zoning districts, provided the public facilities are not located within public rights-of-way.

(4) Appropriate zoning districts. A major WCF may be located in or on other public or private property, buildings, or structures within nonresidential zoning districts as allowed by the zoning chart.

(5) If the applicant demonstrates to the city's satisfaction that it is not technically possible to site in a prioritized location, or as expressly allowed by the zoning chart, the city reserves the right to approve alternative site locations if a denial would be in violation of the 1996 Telecommunications Act, as determined by the city through a Process III review using the following test: Would denial of the application effectively prohibit the provision of service in violation of 47 USC 253 and/or 332?

19.256.150 Major wireless communication facility development standards.

The following development standards shall be followed in the design, siting, and construction of a major WCF:

(1) Building- or structure-mounted major WCFs on existing buildings or structures outside of the public right-of-way. Major WCFs mounted on existing buildings and structures shall conform to the following development standards:

(a) The equipment cabinet for the major WCF shall meet all requirements of subsection (4) of this section.

(b) The maximum size of the major WCF panels and number of antennas shall be determined by the Director, based on the specific project location, surrounding environment, and potential visual impacts.

(c) The combined antennas and supporting structure may extend up to, but not exceed, 15 feet above the existing or proposed roof or other structure regardless of whether the existing structure is in conformance with the existing maximum height of the underlying zone as outlined in the use zone charts, FWRC Title 19, Division VI, Zoning Regulations. Antennas may be mounted to rooftop appurtenances, as identified in FWRC 19.110.070, provided they do not extend beyond 15 feet above the maximum height of the structure as defined per FWRC 19.05.080, H definitions.

(d) The antennas are mounted on the building or structure such that they are located and designed to minimize visual and aesthetic impacts to surrounding land uses and structures.

(e) It is the applicant's responsibility to prove that the proposed size of the major WCF panels and number of antennas is the minimum size and number necessary.

(f) Within residential zones, equipment enclosures, and buildings to house equipment cabinets located above ground on properties adjacent to the public right-of-way, shall meet all applicable setback requirements for residential development of the underlying zone. For developed sites in nonresidential zones, the setback requirements for the equipment enclosure shall be those of the principal use of the subject property. For undeveloped sites in nonresidential zones, the setback requirements for the equipment enclosure shall be 20 feet for front, side, and rear yards.

(g) The major WCF shall comply with all other applicable standards of this code.

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(2) New freestanding major WCFs. All requirements of the associated land use zoning charts must be met. Additionally, these structures shall conform to the following site development standards:

(a) Placement of a freestanding major WCF shall be denied if placement of the antennas on an existing structure can meet the applicant's technical and network location requirements.

(b) Monopoles shall be the only freestanding structures allowed in the city; except that a lattice tower may be used to accommodate the collocation of four or more service providers as part of a joint permit application.

(c) In no case shall a freestanding major WCF be located closer than 500 feet to an existing freestanding major WCF whether it is owned or utilized by the applicant or another service provider.

(d) A freestanding major WCF, including the support structure and associated electronic equipment, shall comply with all required setbacks of the zoning district in which it is located. For developed sites, the setback requirements shall be those of the principal use of the subject property. For undeveloped sites, the setback requirements for new freestanding major WCFs shall be 20 feet for front, side, and rear yards.

(e) Freestanding major WCFs shall be designed and placed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures so as to:

(i) Use existing site features to screen as much of the total WCF as possible from prevalent views; and/or

(ii) Use existing site features as a background so that the total major WCF blends into the background with increased distances.

(f) In reviewing the proposed placement of a facility on the site and any associated landscaping, the city may condition the application to supplement existing trees and mature vegetation to more effectively screen the facility.

(3) Standards for electronic cabinets. Electronic cabinets shall either:

(a) Be placed in a new or existing completely enclosed building. It is the applicant's responsibility to prove that the proposed size of the building is the minimum size necessary to house the equipment; or

(b) Be placed above ground in a new or existing equipment enclosure. It is the applicant's responsibility to prove that the proposed size of the equipment enclosure is the minimum size necessary to house the equipment.

If the equipment enclosure is located within a new enclosed building, the building shall conform to all applicable development standards and design guidelines for the underlying zone. The enclosed building shall be architecturally designed and shall be compatible with existing buildings on the site. The enclosed building shall be screened to the greatest extent possible from any street and/or adjacent properties by landscaping and/or topography.

(4) Standards for equipment enclosures.

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- (a) Equipment enclosures shall not be allowed within the right-of-way.
 - (b) In residential zones, equipment enclosures located above ground on properties adjacent to the public right-of-way shall meet all applicable setback requirements for residential development of the underlying zone. For developed sites in nonresidential zones, the setback requirements for the equipment enclosure shall be those of the principal use of the subject property. For undeveloped sites in nonresidential zones, the setback requirements for the equipment enclosure shall be 20 feet for front, side, and rear yards; however, for undeveloped sites in nonresidential zones, if the applicant can demonstrate that the equipment enclosure can blend in harmoniously with the existing site and complement the landscape buffer requirements of the underlying zone, as determined appropriate by the Director of community development, the equipment enclosure can be located inside of the 20-foot setback but outside of the required landscaping buffer of the underlying zone.
 - (c) Equipment enclosures shall be designed, located, and screened to minimize adverse visual impacts from the public right-of-way and adjacent properties.
 - (d) Equipment enclosures shall be designed, located, and screened to minimize adverse visual and functional impacts on the pedestrian environment.
 - (e) Equipment enclosures and screening shall not adversely impact vehicular sight distance.
- (5) Security fencing.
- (a) No fence shall exceed six feet in height as stipulated in FWRC 19.125.160(5).
 - (b) Security fencing shall be effectively screened from view through the use of appropriate landscaping materials.
 - (c) Chain-link fences shall be painted or coated with a nonreflective color.
- (6) Cumulative effects. The city shall consider the cumulative visual effects of major WCFs mounted on existing structures and/or located on a given permitted site in determining whether additional permits may be granted so as to not adversely affect the visual character of the city.
- (7) Signage. No wireless equipment shall be used for the purpose of mounting signs or message displays of any kind, except for small signs used for identification, hazard warning, and name of service provider.
- (8) Use zone charts, height and permit process.
- (a) The final approval authority for applications made under this section shall be defined by the appropriate permit process as outlined in the use zone charts, FWRC Title 19, Division VI, Zoning Regulations.
 - (b) Allowed heights shall be established relative to the appropriate process as outlined in the use zone charts, FWRC Title 19, Division VI, Zoning Regulations.

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19.256.160 Expiration of major wireless communication facility permit.

A major WCF permit issued under this chapter must be substantially implemented within three years from the date of final approval or the permit shall expire. The holder of the permit may request one extension to be limited to 12 months, if the applicant cannot construct the major WCF within the original three-year period.

19.256.170 Nonconformance exceptions.

Permit applications made under this section to locate a major WCF on property on which a nonconformance is located shall be exempt from the requirements of Chapter 19.30 FWRC, Nonconformance, to bring the property into conformance as follows:

- (1) To provide the public improvements required by Chapter 19.135 FWRC, Development Improvements, as stipulated in FWRC 19.30.110.
- (2) To bring the property into conformance with the development regulations prescribed in FWRC Title 16 relating to water quality as stipulated in FWRC 19.30.120(1)(g). All other requirements of FWRC 19.30.120 to bring the property into conformance with the development regulations prescribed in FWRC Title 16 relating to water quality shall apply.

19.256.180 Temporary wireless communication facilities.

As determined by the Director, a temporary WCF may be deployed and operated as follows:

- (1) For a period of 90 days from the date of the issuance of the applicable WCF permit for the temporary WCF; provided, however, that the temporary WCF creates no more adverse impacts than the WCF which was approved through the applicable permit process. Only one temporary WCF shall be permitted per a single property.
- (2) For a period of time determined to be appropriate by the Director, during an emergency declared by the city, state, or federal government.
- (3) Prior to installation of the temporary WCF, the applicant shall provide the city with a cash bond in an amount to be determined by the Director in order to guarantee performance of future removal and restoration of the site.

19.256.190 Collocation.

(1) A permittee shall cooperate with other service providers in collocating additional antennas on support structures and/or on existing buildings and sites, provided said proposed collocatees have received a permit for such use at said site from the city. A permittee shall allow other service providers to collocate and share the permitted site, provided such shared use does not give rise to a substantial technical level impairment of the permitted use (as opposed to a competitive conflict or financial burden). In the event a dispute arises as to whether a permittee has exercised good faith in accommodating a new applicant, the city may require a third party technical study at the expense of the permittee. Failure to comply with this provision may result in a revocation of the permit.

(2) A signed statement indicating that the applicant agrees to allow for the potential collocation of additional major WCF equipment by other service providers on the applicant's structure or within the same site location shall be submitted by the applicant as part of the permit application. If an applicant contends that future collocation is not possible on their site, they must submit a technical study documenting why.

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19.256.200 Removal of facility.

(1) Abandonment and removal. The owner or operator of a WCF shall provide the city with a copy of the notice of intent to cease operations required by the FCC at the time it is submitted to the FCC. Additionally, the owner or operator of a WCF shall notify the city in writing of the abandonment of a particular facility within 30 days of the date the WCF is abandoned. The abandoned WCF shall be removed by the facility owner within 90 days of the date the WCF is abandoned, the permit is revoked, or if the facility falls into disrepair and is not maintained, as determined by the city. Disrepair includes structural features, paint, landscaping, or general lack of maintenance that could result in adverse safety or visual impacts. If there are two or more users of a single tower, then the city's right to remove the tower shall not become effective until all users abandon the tower.

(2) Partial abandonment and removal. If the abandoned antennas on any major WCF are removed or relocated to a point where the top 20 percent or more of the height of the supporting structure is no longer in use, the major WCF shall be considered partially abandoned. The owner or operator of any partially abandoned major WCF shall notify the city in writing of the partial abandonment of a particular facility within 30 days of the date the major WCF is partially abandoned. The owner of the major WCF shall have 120 days from the date of partial abandonment to collocate another service on the major WCF. If another service provider is not added to the major WCF within the allowed 120-day collocation period, the owner shall, in 210 days of partial abandonment, dismantle and remove that portion of the supporting structure that exceeds the point at which the highest operational antenna is mounted.

(3) Removal and lien. If the owner or operator fails to remove the abandoned or partially abandoned facility upon 210 days of its abandonment or partial abandonment, the responsibility for removal falls upon the property owner on which the abandoned or partially abandoned facility is located. The city may enforce this subsection using the procedures as set forth in Chapter 1.15 FWRC.

19.256.210 Revocation of permit.

A permit issued under this chapter may be revoked, suspended or denied for any one or more of the following reasons:

- (1) Failure to comply with any federal, state, or local laws or regulations;
- (2) Failure to comply with any of the terms and conditions imposed by the city on the issuance of a permit;
- (3) When the permit was procured by fraud, false representation, or omission of material facts;
- (4) Failure to cooperate with other major WCF providers in collocation efforts as required by this chapter;
- (5) Failure to comply with federal standards for RF emissions; and
- (6) Pursuant to FWRC 19.05.300(3), the city shall use the same criteria to determine if the permit shall be revoked as it used to grant the permit.

Section 7. Title 19 of the Federal Way Revised Code is hereby amended by the addition of a new Chapter – 19.257 “Eligible Facilities Requests”:

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Chapter 19.256 ELIGIBLE FACILITIES REQUESTS

Sections:

- 19.257.010 Purpose
- 19.257.020 Definitions
- 19.257.030 Application.
- 19.257.040 Qualification as an eligible facilities request.
- 19.257.050 Time frame for review.
- 19.257.060 Tolling of the time frame for review.
- 19.257.070 Determination that application is not an eligible facilities request.
- 19.257.080 Failure to act.

19.257.010 Purpose.

Congress and the Federal Communications Commission (“FCC”) have, pursuant to the authority granted by 47 U.S.C. § 253(c) and 47 U.S.C. § 332(a), required local governments to act on personal wireless service facility applications within a reasonable period of time and have established time limits or “shot clocks” for local review. The Washington State Legislature has also adopted similar limitations under the provisions of Chapter 35.99 RCW. Accordingly, the city adopts the following provisions for review of applications for eligible facility requests as defined by this chapter.

19.257.020 Definitions.

(1) Definitions. The following definitions shall apply to eligible facilities requests only as described in this section:

- (a) “Base station” means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base station includes, without limitation:
 - (i) Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems (“DAS”) and small wireless networks).
 - (iii) Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subsections (1)(a)(i) and (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
 - (iv) The term does not include any structure that, at the time the eligible facilities request application is filed with the city, does not support or house equipment described in subsections (1)(a)(i) and (ii) of this section.

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

(c) “Eligible facilities request” means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(d) “Eligible support structure” means any tower or base station as defined in this section; provided, that it is existing at the time the relevant application is filed with the city.

(e) Existing. A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process; provided, that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

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

(i) For towers other than towers in the public right-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;

(ii) For towers other than towers in the public right-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;

(iii) 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 right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

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

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

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(g) “Tower” means any structure built for the sole or primary purpose of supporting any FCC-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.

(h) “Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

19.257.030 Application.

(1) Application. The community development Director (“Director”) shall prepare and make publicly available an application form that shall be limited to the information necessary for the city to consider whether an application is an eligible facilities request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

(2) Type of review. Upon receipt of an application for an eligible facilities request pursuant to this chapter, the Director shall review such application to determine whether the application qualifies as an eligible facilities request.

19.257.040 Qualification as an eligible facilities request.

Upon receipt of an application for an eligible facilities request, the Director shall review such application to determine whether the application qualifies as an eligible facilities request.

19.257.050 Time frame for review.

Applications for an eligible facilities request are reviewed by the Director or his/her designee, who will approve the application within 60 days of the date an applicant submits an eligible facilities request application, unless the Director or designee determines that the application does not qualify under FWRC 19.257.020(1)(c).

19.257.060 Tolling of the time frame for review.

The 60-day review period begins to run when the application is filed and may be tolled only by mutual agreement by the city and the applicant or in cases where the city determines that the application is incomplete. The time frame for review of an eligible facilities request is not tolled by a moratorium on the review of applications.

(1) To toll the time frame for incompleteness, the city shall provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.

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

(3) Following a supplemental submission, the city will notify the applicant within 10 days if the supplemental submission did not provide the information identified in the original notice delineating

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missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

19.257.070 Determination that application is not an eligible facilities request.

If the city determines that the applicant's request does not qualify as an eligible facilities request, the city shall deny the application.

19.257.080 Failure to act.

In the event the city fails to approve or deny an eligible facilities request 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.

Section 8. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Federal Way hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 9. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 10. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 11. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage and publication, as provided by law.

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PASSED by the City Council of the City of Federal Way this _____ day of _____, 2021.

CITY OF FEDERAL WAY:

JIM FERRELL, MAYOR

ATTEST:

STEPHANIE COURTNEY, CMC, CITY CLERK

APPROVED AS TO FORM:

J. RYAN CALL, CITY ATTORNEY

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO.: _____




PLANNING COMMISSION STAFF REPORT

December 2, 2020

TO: Lawson Bronson, Federal Way Planning Commission Chair

FROM: Brian Davis, Community Development Director 

Stacey Welsh, Planning Manager 

Robert "Doc" Hansen, Principal Planner 

SUBJECT: **File 20-100129-UP: 2020 Proposed Comprehensive Plan Amendment and Rezone for Shelter Resources Property from RS-7.2 to High Density, Multiple Family Classification and RM 1800.**

I. INTRODUCTION

Pursuant to RCW 36.70A(2)(a), the City of Federal Way may update its comprehensive plan annually. Per *Federal Way Revised Code* (FWRC) 19.80.050, the city has elected to review citizen-initiated requests on an annual basis. As part of the annual review, the city may also make changes to chapters and maps of the comprehensive plan. The governing body shall consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained.

Shelter Resources, Inc. requested a continuation for its comprehensive plan amendment and rezone on October 20, 2020, at the original proposal's second reading before City Council. The request is made to change the designations of parcels #720480-0172, #720480-0174, and now the addition of parcel #720480-0165. The proposal is to change the land's classification from Single-Family High Density Residential and Single-Family (RS 7.2, one unit per 7,200 square feet) to Multifamily Residential and Multifamily 1800 (RM 1800, one unit per 1,800 square feet. All parcels are within one half mile of the planned 272nd Sound Transit Light Rail Station, at South 272nd Street.

These parcels do not front on a public street. However, the applicant has acquired the Silver Shadow Apartments, which is adjacent to the west, in order to provide the necessary access to parcels of the project.

The Planning Commission heard the original proposal on August 19, 2020, and is hearing it again to include another parcel. Circumstances regarding the proposal have not changed.

II. REASON FOR PLANNING COMMISSION ACTION

FWRC Chapter 19.80, “Council Rezones,” establishes a process and criteria for comprehensive plan amendments. Consistent with Process VI review, the role of the Planning Commission is as follows:

1. To review and evaluate the requests for comprehensive plan amendments;
2. To determine whether the proposed comprehensive plan amendments meet the criteria provided by FWRC.80.140, 19.80.150, and 19.75.130(3); and
3. To forward a recommendation to the City Council regarding adoption of the proposed comprehensive plan amendments.

Even though this proposal was properly noticed and a public hearing held before the Planning Commission on August 19, 2020, there is an adjustment to the area proposed for zone/comprehensive plan amendment to accommodate a revised proposal. This adjustment must go through additional public notice, Planning Commission public hearing, and City Council readings to be enacted.

III. PROCEDURAL SUMMARY

Steps	Date
Issuance of Determination of Nonsignificance (DNS) pursuant to the State Environmental Policy Act (SEPA)	March 13, 2020
End of SEPA Comment Period	March 27, 2020
End of SEPA Appeal Period	April 17, 2020
Public Hearing before the Planning Commission	August 19, 2020
LUTC Meeting	September 14, 2020
City Council 1st Reading	October 8, 2020
City Council 2nd Reading	Postponed
2 nd Public Hearing before Planning Commission	December 2, 2020
LUTC Meeting	December 7, 2020
City Council 1 st Reading	January 5, 2021
City Council 2 nd Reading	January 19, 2021

IV. BACKGROUND AND PROJECT DESCRIPTION

The land requested for rezone is three parcels, equaling 5.48 acres in size, and is currently vacant.

In 2017, Shelter Resources, Inc. requested information on rezone of the property in order to allow development of a multiple-family, transit-oriented project. The property does not front a public street, and therefore, had no documented access to Pacific Highway South when the application was made. Access was to be secured before the city would consider the requested RM 1800

zoning. The land owners indicated that they would eventually obtain public access by the time of the public hearing, and the city submitted the proposal to the state's Department of Commerce for review of the proposal's adherence to RCW 36.70A, the Growth Management Act. No issues were raised by the Department of Commerce on the proposal.

Since the 2018 application, the applicants for the proposal have secured public access to the property through an existing multiple-family development.

Land Use

An existing multiple family residential development is located adjacent and west of the proposed rezone/comprehensive plan site, similar to the request made by the applicant. A Metro Transit Park and Ride area is located north of the site and is zoned Community Business (BC). Land at the northeast point of the site is zoned RM 1800 and is developed with multifamily housing. Land directly east of the proposed change is zoned RS 7.2 and is vacant and restricted to development. Approximately 200 feet southeast from the southeastern corner of the proposed rezone site is a developed single-family subdivision zoned RS 7.2. Land directly south and adjacent of the site is proposed for storage and is zoned BC. The single-family development located southeast of the proposal is buffered from this proposed by a Native Growth Protection Easement (NGPE), where development is prohibited.

Multi-family housing is not allowed in the existing RS 7.2 zone. However, it is allowed in the requested RM 1800 zone. The applicant is requesting a comprehensive plan designation amendment and rezone in order to allow transit-oriented multi-family housing since the parcel is adjacent to the planned 272nd Sound Transit Light Rail Station. The station is planned to be operating by 2024 at the existing Star Lake Park and Ride located adjacent to the intersection of I-5 and South 272nd Street.

SEPA

Issuance of a determination of nonsignificance (DNS) for the project was made on March 13, 2020, and the period to appeal the determination ended on April 17, 2020. No comments were received regarding the proposal. This action is considered completion of the SEPA requirements with the revised proposal. WAC 197-11-600(3)(b) permits the use of the existing DNS issued on March 13, 2020 as long as the change is not substantial, or as long as no new information is received indicating environmental impact from the revision.

V. COMPLIANCE WITH THE COMPREHENSIVE PLAN

The property proposed to be rezoned is now within a Single-Family High-Density Residential plan classification. The applicants request to be within a multifamily classification, allowing the proposed multi-family development. According to FWRC 19.80.140, the city may consider, but is not limited to, the following factors when considering a proposed amendment to the comprehensive plan.

- (1) The effect upon the physical environment.

There are no environmental restrictions to development on the two northern properties of the proposal. There is a steep slope to the east of the site. Existing stormwater and development standards will reduce the impact of development. An additional 130 units is expected to increase traffic by approximately 910 vehicle trips per day, assuming 7 trips per unit.

- (2) The effect on open space, streams, and lakes.

Please refer to (1) above.

- (3) The compatibility with and impact on adjacent land uses and surrounding neighborhoods.

Multiple family development will be compatible with the neighborhood area. Existing multi-family development exists to the west and northeast of the project. The commercial land use along Pacific Highway South has a high-density potential that is conducive to such development. The zone classification will be compatible with the surrounding environment. The open space area to the east contains a wetland that may remain undeveloped, thereby providing a buffer between the existing single-family housing in the RS 7.2 zone and the proposed multiple family development.

- (4) The adequacy of and impact on community facilities, including utilities, roads, public transportation, parks, recreation, and schools.

Existing sewer and water capital facilities exist adjacent to the development adequate to service any potential development. Access has been provided to the site, which will provide appropriate entrance to a proposed development. Any project is subject to transportation and school impact fees designed to address impact upon these facilities.

- (5) The benefit to the neighborhood, city, and region.

The proposed zone and amendment provide opportunity for development of additional housing needed within the city, as encouraged by the comprehensive plan. Existing land uses surrounding the proposal are compatible with development that may result from the action of the amendment. Any development would be a Transit Oriented Development (TOD), by locating next to the transit station located to the north of the site. Single-family development to the east of the site will be buffered by native vegetation expected to remain. Any development within the space will further meet objectives and policies for provision of adequate housing.

- (6) The quantity and location of land planned for the proposed land use type and density, and the demand for such land.

The site is near mass transportation and has adequate physical public facilities (road, water, and sewer) to accommodate high density development.

- (7) The current and projected population density in the area.

This proposed amendment will allow additional provision/production of needed high density housing for existing and future populations. The site exists near and adjacent to high density development making it compatible with the surrounding environment.

- (8) The effect upon other aspects of the comprehensive plan.

Approval of this proposal fulfills and meets relevant land use, capital facilities, housing, environmental, and transportation policies within the adopted comprehensive plan (see item 3 below, per FWRC 19.80.150).

Per FWRC 19.80.150, the city may amend the comprehensive plan only if it finds that the proposal meets the criteria for amending the comprehensive plan, including:

- (1) The proposed amendment bears a substantial relationship to public health, safety, or welfare;

The proposed amendment and rezone enable the development of needed housing within the City of Federal Way.

- (2) The proposed amendment is in the best interest of the residents of the city.

Please see the responses under Sections V (1), (2), and (5).

- (3) The proposed amendment is consistent with the requirements of Chapter 36.70A RCW, and with the portion of the city's adopted plan not affected by the amendments.

The proposed category and zone reclassification are consistent with policies listed in Chapter 5 of the 2015 Federal Way Comprehensive Plan. Specifically, the following policies are relevant to the proposal being made:

LUP 21 - Support multi-family development with transportation and capital facilities improvements.

The proposal is located adjacent to a transit stop, making it a transit-oriented development, and providing potential residents access to public transportation.

HP13 - Continue to use design guidelines to ensure that new and infill developments have aesthetic appeal and minimize impacts on surrounding development.

The proposal will be designed to provide the needed housing, while maintaining the compatibility of the neighborhood. Existing, unbuildable open spaces will provide a buffer between an existing single-family neighborhood to the southeast and the multiple family development to the west and northeast. Any development in the rezoned area will need to meet design standards required in FWRC 19.115 to insure compatibility.

HG5 - Develop a range of affordable housing opportunities for low-income households consistent with the CWPPs and the needs of the community.

Two County-Wide Planning Policies (CWPP) are significant to this development including:

H-9 - Plan for housing that is accessible to major employment centers and affordable to the workforce in them so people of all incomes can live near or within reasonable commuting distance of their places of work. Encourage housing production at a level that improves the balance of housing to employment throughout the county.

T-12 - Address the needs of non-driving populations in the development and management of local and regional transportation systems.

The proposed project is located near a public transit station, allowing low income residents access to public transportation throughout the region and therefore, access to employment and shopping.

HP21 - Promote fair housing access to all persons without discrimination.

The proposal is intended to provide housing on the basis of income and not upon any social status; thereby, avoiding any discrimination issues.

HP22 - As required by the CWPPs, maintain sufficient land supply and adequate zoning within the City to accommodate those types of housing consistent with the City's affordable housing targets.

Land for the development of all housing is scarce, and this property has not been developed largely due to the non-access of the property to any street. Since the project proponents obtained access to the property, future multi-family development will aid in the development of affordable housing.

VI. COMPLIANCE WITH FWRC 19.75.130(3)

Site-specific requests are also required to be evaluated for compliance with this section.

1) The city may approve the application only if it finds that:

a. The proposed request is in the best interests of the residents of the city.

Provision of affordable housing is a main objective within the city's comprehensive plan, and the proponents initiating the reclassification and rezone have a primary purpose of providing affordable housing. The proponents intend to apply for a project providing affordable housing.

b. The proposed request is appropriate because either:

(i) Conditions in the immediate vicinity of the subject property have so significantly changed since the property was given its present zoning that, under those changed conditions, a change in designation is within the public interest; or

Demand for affordable housing and all housing has increased since the adoption of the plan. Average housing cost in 2015 was \$289,100, increasing to \$362,100 in 2018, a 12 percent increase and demonstrating a need for rental, multifamily dwellings. The proposed reclassification will allow for expanded affordable housing.

(ii) The rezone will correct a zone classification or zone boundary that was inappropriate when established.

In relation to item (ii) above, the proposal is not intended to "correct" any inappropriate zone classification.

- c. It is consistent with the comprehensive plan.

The proposal is designated for High Density Residential in the comprehensive plan. The proposal will reclassify the site to “Multiple Family,” which is in the nature of “high density” multi-family development. (see the expanded response in Section V, FWRC 19.80.150[3], above).

- d. It is consistent with all applicable provisions of the title, including those adopted by reference from the comprehensive plan.

If this request is granted, any future development will be required to comply with all city regulations and the comprehensive plan.

- e. It is consistent with the public health, safety, and welfare.

The proposed amendment provides opportunity for development of affordable housing. Provision of housing is consistent with meeting public welfare. All development will be required to meet current codes and regulations to protect public safety.

VII. CITIZEN COMMENT

No citizen comment has been received on this proposal at the time of writing the report. Comment was received in a March 11, 2020, letter from the Department of Ecology encouraging testing of soils for arsenic and lead prior to any development. These items are reviewed at time of SEPA review when a project is submitted.

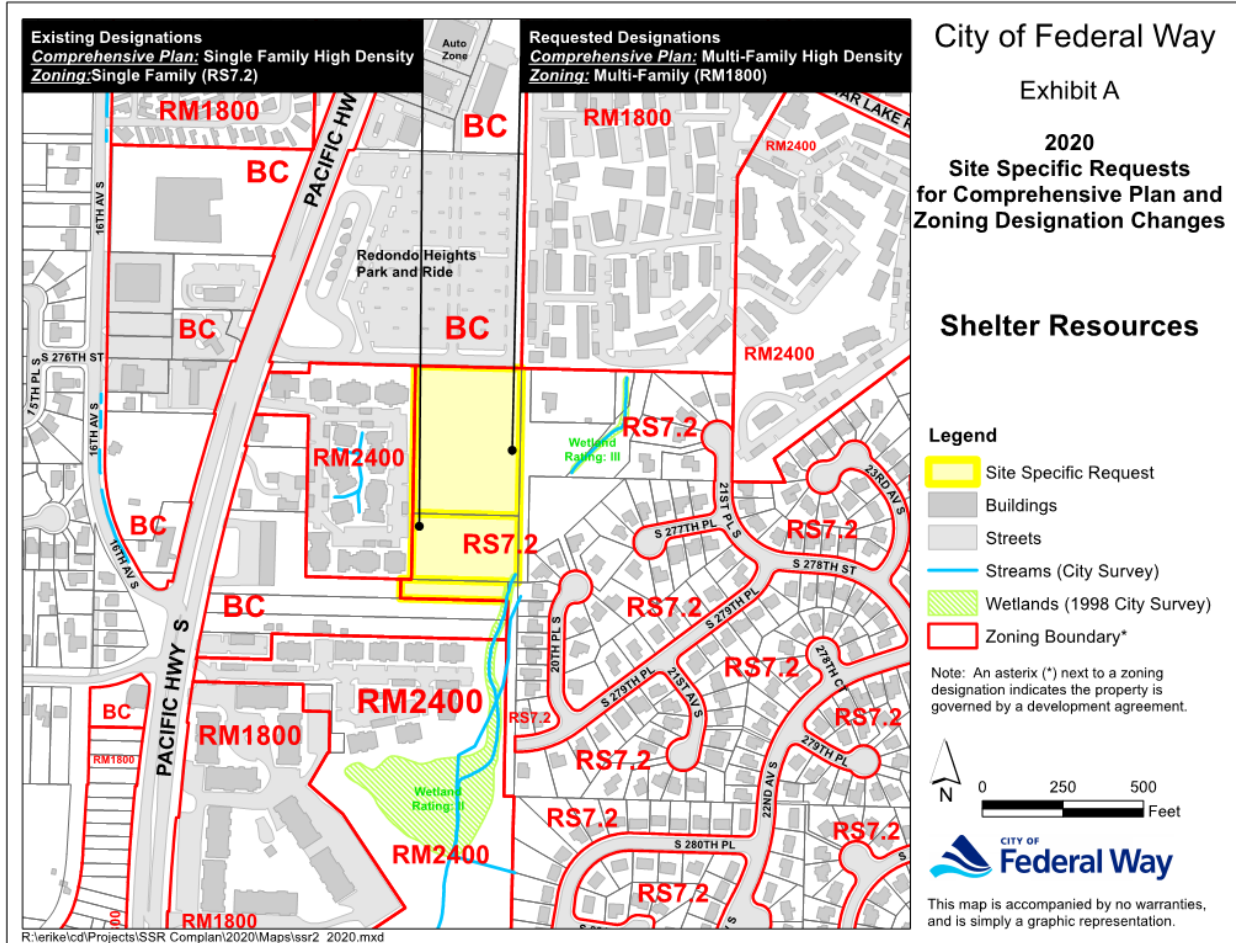
VIII. MAYOR’S RECOMMENDATION

Upon review of the application and information that has been presented, the Mayor makes a recommendation to approve the proposed amendment and rezone.

IX. PLANNING COMMISSION ACTION

1. Recommend to City Council adoption of the proposed comprehensive plan amendment/rezone;
2. Recommend to City Council that the proposed comprehensive plan amendment/rezone not be adopted;
3. Forward the proposed comprehensive plan amendment/rezone to City Council without a recommendation; or
4. Modify the proposed comprehensive plan amendment/rezone and recommend to City Council adoption of the amendment as modified.

AREA PROPOSED FOR AMENDMENT AND REZONE



2021 Planning Commission Work Program

Code Amendments

No	Section	Item	Rationale for Suggested Change	Status
1	Various	Minor amendments may be needed to clarify use and interpretation of the code.	Issues related to code clarification and/or code improvement that do not require significant work.	Completion in 2021.
2	Title 18	The process for approving a final long plat.	Many jurisdictions require only administrative approval of a final plat, which is allowed by state law.	Ongoing.
3	19.225-230 19.115	Review height/bulk regulations, multi-family requirements, parking in transit areas, design standards, and view corridors in the City Center.	The City Center in the comprehensive plan is intended to function as a center of public activity. School impact fees, height/bulk regulations, and parking requirements have discouraged developers from proposing some projects. Parking requirements will be re-investigated since there is an abundance of parking in the downtown area.	Ongoing.
4	Title 14	Permit the maximum exemptions allowed within WAC 197-11-800.	Some of the exemptions allowed within SEPA are not included within Title 14 of the <i>Federal Way Revised Code</i> (FWRC), sometimes creating the need for SEPA review.	Ongoing.
5	19.140	Update of Sign Program	The sign code needs to be reviewed in relation to the <i>Reed v. Town of Gilbert</i> case to ensure that the code is not content based.	On-Hold.
6	Title 19	Implement the Twin Lakes Subarea Plan through code amendments related to the maximum allowable building height and uses encouraged within the subarea plan.	The Twin Lakes Subarea is that area around the intersection of 21 st Avenue SW and SW Campus Drive/SW 336 th Street is zoned Neighborhood Business (BN). Specific goals and policies were adopted, but never implemented through amendments to the FWRC. The plan needs full review and implementing procedures researched and evaluated. This may result in changes to the subarea plan in the evaluation and therefore, will require a significant amount of work.	On Hold.
7	Various	Public Works Amendments	Amendments received from the Department of Public Works, as needed, related to transportation, stormwater, and wireless facilities.	Ongoing

Comprehensive Plan Changes

No	Section	Existing	Rationale for Suggested Change	Status
1	Comp Plan	Continue researching housing needs, preparation and adoption of a Housing Action Plan (HAP).	Evaluate increased housing needs for both moderate- and low-income families with the city's expanding economic base, development of a "City Center," and the creation of the light rail system to the City Center. The HAP relates to the Housing Element of the Comprehensive Plan.	Ongoing, to be adopted by June 2021.
2	Comp Plan	Population projections are being completed by King County. The purpose of "Target Growth" is to allocate this population throughout the county by jurisdiction. Allocated numbers for funds, and justification for future annexations.	The city will participate throughout this process to insure a fair share of this allocation. The city will have to plan for the allocated population and jobs, which will be the basis of the next major Comprehensive Plan update.	Ongoing, to be completed in 2021.
3	Comp Plan Update	The comprehensive plan is mandated by the state GMA to be updated every eight years. Due to Covid-19, this mandated time has been extended for one year, and is due for update by 2024. It is necessary to begin the update of the plan.	This major update should begin as soon as time permits so that the plan is not completed last minute. The Housing Element will largely be updated this year with the adoption of the Housing Action Plan. An overall strategy to identify the issues the city might be facing and outline of the plan is proposed to be begin this year.	Ongoing.
4	Comp. Plan	Downtown Comprehensive Plan Update	Consultant to be retained, project funded by Council for 2021-2022	Start in 2021
5	Docket	Two applicants have requested a comprehensive plan amendment/rezone. These will be heard as Docket items this year if Council approves them moving forward.	One applicant is requesting a change from OP designation to RM. The second involves a request to change parcels zoned RS to RM.	Ongoing.

2020 Project Completions

<i>Passing of several amendments to the code which made the code clearer for purposes of interpretation and administration. (Housekeeping amendments)</i>
<i>Shelter Resources 272nd Transit Oriented Development -- Request completed to amend comprehensive plan and zoning classification located south of South 276th Street and east of Pacific Highway South from Single-Family High Density Residential and Single-Family (RS 7.2) to Multi-Family Residential and Multi-Family (RM 1800).</i>
<i>Amendment of 19.250 to increase the size of cottage development projects without the requirement for it to have a portion in affordable housing.</i>
<i>Amendment to FWRC 19.142, Flood Damage Protection, to meet federal regulations; an amendment necessary for the city to keep its flood insurance provided to landowners by FEMA.</i>
<i>Amendment to FWRC 19.256 regarding adoption of new standards/requirements for wireless communication facilities, and FWRC 19.91, the update of transportation impact fees.</i>