

**ORDINANCE NO. 1699**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** amending the provisions of Title 20 DMMC, section 20.01.030, "Definitions," to add new definitions relating to small cell deployment and chapter 20.07 DMMC, *Antennas and Wireless Communication Facilities*, to add standards and regulations relating to small cell facilities; repealing chapter 20.10 DMMC and enacting in its place a new chapter 20.10 DMMC, *Eligible Facilities Requests and Appeals*; and fixing a time when the same shall be effective.

**WHEREAS**, the City Council seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement of small cell facilities where appropriate, and

**WHEREAS**, the installation, expansion, and maintenance of small cell technology facilities and associated structures on or along the Right of Way and on private properties may have an impact upon: (1) the aesthetic values and character of the City; (2) safe use and passage on or along the Rights of Way by the public; and (3) properties and property values in the City in areas where such structures are placed, and therefore local regulation is appropriate, and

**WHEREAS**, the federal Telecommunications Act of 1996 and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact reasonable regulations for the placement, expansion, height, and maintenance of small cell technologies facilities and associated structures, and

**WHEREAS**, the adoption of the regulations, procedures and requirements in this ordinance will permit Applicants and Providers to enhance the provision of personal wireless service and protect the public welfare, health, safety and interests of the City's citizens, and

**WHEREAS**, the City Council deems it to be in the public interest to repeal chapter 20.10 DMMC relating to appeals and enact a new chapter establishing time limits known as "shot clocks" as required by federal laws such as 47 U.S.C. §1455(a) and 47 CFR 1.40001, and

**WHEREAS**, federal law and regulation sets time limits on the processing of applications for eligible facility requests to

expand existing structures which do not substantially change the height or profile of the structures used to collocate wireless communications facilities, and

**WHEREAS**, the City Council acknowledges that the growing use of smart phones and other personal wireless devices creates a substantial need for wireless data transmission and therefore deems it in the public interest to adopt the federal guidelines while integrating the provisions for small cell permitting in the code in order to ensure for the speedy review of applications; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1.** DMMC 20.01.030 and section 3 of Ordinance No. 1316 are amended to remove subsection numbers and to place definitions in alphabetic order, and are further amended or added to read as follows:

"Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet, or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower, utility pole, light standard, building or other structure for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular," "enhanced specialized mobile radio" and "personal communications services," telecommunications services, and its attendant base station.

"Antenna height" means the vertical distance measured from finished grade to the highest point of the antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Approved small cell facility": any small cell facility that has received all required permits.

"Base Station": 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:

(a) Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(b) 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-cell networks).

(c) Any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in subparagraph (a) and (b) above 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.

The term does not include any structure that, at the time the relevant application is filed with the City under this section, does not support or house equipment described in subparagraph (a) and (b) above.

"Co-location" or "collocation", except when utilized in chapter 20.10 DMMC, means the use of a personal wireless service facility or cell site by more than one personal wireless service provider or the siting

of a facility on an existing structure. In the context of chapter 20.10 DMMC, "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.

"Commercial zones" or "commercial district" means and includes each of the zoning classifications as established in DMMC 18.05.080(2) as currently written or subsequently amended.

"Concealment elements": Transmission facilities designed to look like some feature other than a wireless tower or base station or which minimizes the visual impact of an antenna by use of non-reflective materials, appropriate colors and/or a concealment canister.

"Conditional use permit" or "CUP" means a process and approval as described in Title 18 DMMC.

"Eligible Facilities Request": 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:

- (a) Collocation of new transmission equipment;
- (b) Removal of transmission equipment; or
- (c) Replacement of transmission equipment.

"Eligible support structure": 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.

"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 because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

"Microcells": is defined in accord with RCW 80.36.375.

"Mount" means the structure or surface upon which personal wireless service facilities are mounted.

"Public right-of-way" and/or "right-of-way" shall be defined in accordance with RCW 35.99.010(5) and means land dedicated for public roads and streets but does not include land so dedicated which has not been opened and improved for motor vehicle use by the public nor other land excluded by statute.

"Residential Zone" "residential district" means and includes each of the zoning classifications as established in DMMC 18.06.080(1) as currently written or as subsequently amended.

"Small cell" and "small cell network" are defined in accord with RCW 80.36.375.

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

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

(b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

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

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

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

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

"Telecommunications service" shall be defined as provided in RCW 35.99.010 (7).

"Tower": 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.

"Transmission equipment": 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.

"Urban Designed Corridor": a right-of-way corridor with context sensitive designed street light poles and fed by underground power. Street lights may be owned by either the City or Puget Sound Energy.

"Utility pole": a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

**Sec. 2.** Chapter 20.07 DMMC and sections 74 through 87 of Ordinance No. 1316 are amended to include provisions relating to Small Cell Development and Standards to read as follows:

**20.07.010. Purpose.**

(1) The standards set forth in this chapter are designed to protect the public health, safety, and welfare, to protect property values and

minimize visual impact while furthering the development of enhanced telecommunications services in the City and these standards were designed to comply with the Telecommunications Act of 1996. The provisions of this Title are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This title shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

(2) To the extent that any provision of this Title is inconsistent or conflicts with any other City ordinance this Title shall control. Otherwise, this Title shall be construed consistently with the other provisions and regulations of the City.

(3) In reviewing any application to provide personal wireless service or to install personal wireless service facilities, the City shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The City shall approve, approve with conditions, or deny the application in accordance with the time frames and exceptions set forth in this Title and in accordance with other applicable ordinances.

**20.07.020. Exemptions.** The following are exempt from the provisions of this chapter and shall be permitted in all zones:

(1) Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

(2) Antennas and related equipment no more than three feet in height that are being stored, shipped, or displayed for sale.

(3) Radar systems for military and civilian communication and navigation.

(4) Wireless radio utilized for temporary emergency communications in the event of a disaster and police, fire and first responder communications facilities; provided, however, that joint use networks such as the Public Safety Broadband Network (First Net) which also provides commercial telecommunications services to the public shall be subject to this chapter.

(5) Licensed amateur (ham) radio stations.

(6) Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when used as a secondary use of the property.

(7) Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height or dimensions of antennas, towers, or buildings); provided, that compliance with the standards of this Title are maintained.

(8) Subject to compliance with all other applicable standards of this Title, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until 30 days after the completion of such emergency activity.

(9) A cell on wheels or other temporary personal wireless telecommunications facility shall be permitted at a time and manner as determined by the City.

(10) Automated meter reading (AMR) facilities for collecting utility meter data for use in the sale of utility services, except for whip 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.

(11) Strand-mounted and other stand-alone wireless local area network ("Wi-Fi") antennae less than 1.5 cubic feet in total volume when installed pursuant to a valid franchise and certified as compliant with FCC regulations governing radio frequency ("RF") emissions. This exception does not apply to telecommunications facilities larger in scale or electrical power.

(12) Eligible facilities requests. See DMMC 20.07.080 and chapter 20.10 DMMC.

## **DIVISION 1**

### **LARGE SCALE WIRELESS COMMUNICATION FACILITIES**

**20.07.030. Recognition of industry site selection criteria.** In establishing a new site, the industry requires a location that is technically compatible with the established network. A general area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria which are not listed in order of priority:

(1) Topography as it relates to line of sight transmissions for optimum efficiency in telephone service.

(2) Availability of road access.

(3) Availability of electric power.

(4) Availability of land-based telephone lines or microwave link capability.

(5) Lands leasable at fair market value, and landlords who want facilities to be located on their properties consistent with zoning regulations.

(6) Screening potential of existing vegetation, structures and topographic features.

(7) Zoning that will allow low power mobile radio service facilities.

(8) Compatibility with adjacent land uses.

(9) The least number of sites to cover the desired area.

(10) The greatest amount of coverage, consistent with physical requirements.

(11) Opportunities to mitigate possible visual impact.

(12) Availability of suitable existing structures for antenna mounting.

**20.07.040. Site selection criteria.**

(1) Any applicant proposing to construct an antenna support structure or mount an antenna on an existing structure outside of the Public Rights-of-Way or any facility in the Public Rights-of-Way other than small cell facilities, shall demonstrate by engineering evidence that the antenna must be located at the site to satisfy its function in the applicant's local grid system. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.

(2) Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.

(3) Low power mobile radio service facilities shall be located and designed to minimize and mitigate any significant adverse impact on residential property values. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

(4) In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zone district. In all zones, towers shall be significantly screened or designed according to standards to be established by the City Manager.

**20.07.050. Priority of locations.** The order of priorities for locating new personal wireless service facilities other than small cell facilities in the Public Rights-of-Way shall be as follows:

(1) Place antennas and towers on City property if practical.

(2) Place antennas on existing structures, such as buildings, towers, water towers and smokestacks.

(3) Place antennas and towers in districts zoned commercial.

(4) Place antennas and towers on other nonresidential property.

(5) Place antennas on multifamily residential structures exceeding 30 feet in height.

(6) Place antennas and towers in residential zones (a) only if appropriate locations are not available in nonresidential zones, or (b) when collocation on an existing structure can be accomplished in a manner consistent with the design and aesthetic considerations provided under this Title.

**20.07.060. Conditional Use Permit required for antennas and personal wireless facilities in a Residential Zone.**

(1) Except for items exempt from the provisions of this Title as provided in DMMC 20.07.020, a conditional use permit is required for all antennas, towers, and personal wireless facilities located in a residential zone, other than small cell facilities in the Public Rights-of-Way. Small cell facilities within the Public Rights-of-Way shall be located pursuant to Division II of this chapter. Any terms and conditions imposed on such use shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the facility and situation at hand, do not provide more or less favorable terms and conditions than those required of licensees or franchisees under this Title.

(2) An applicant that wishes to locate a new antenna support structure in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a nonresidential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

(3) Applicants are required to demonstrate that they: (a) have contacted the owners of structures in excess of 30 feet within a one-quarter-mile radius of the site proposed and which from a location standpoint could provide part of a network for transmission of signals, and (b) have asked for permission to install the antenna on those structures at fair market value.

(4) The information submitted by the applicant shall include: (a) a map of the area to be served by the tower or antenna, (b) its relationship to other cell sites in the applicant's network, and (c) an evaluation of existing buildings taller than 30 feet within one-quarter mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

(5) In order to process eligible facility requests collocations and other applications subject to Federal and state time limitations, the conditional use process may be expedited to the extent required to comply with chapter 35.99 RCW.

(6) Waiver of Conditional Use Permit. See DMMC 20.07.080 for waiver of conditional use permit for collocations and eligible facilities requests. A conditional use permit is not required for the location of Wireless Communication Facilities on Public Property pursuant to DMMC 20.07.070.

**20.07.070. Siting priority on public property.**

Where public property is sought to be utilized by an applicant, priority for the use of City-owned land for wireless antennas and towers will be given to the following entities in descending order:

- (1) City of Des Moines;

(2) Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the City of Des Moines and private entities with a public safety agreement with the City of Des Moines;

(3) Other governmental agencies, for uses which are not related to public safety; and

(4) Entities providing licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging, and similar services that are marketed to the general public.

(a) Minimum requirements. The placement of personal wireless service facilities on City-owned property must comply with the following requirements:

(i) The facilities will not interfere with the purpose for which the City-owned property is intended;

(ii) Probable, significant adverse impacts on surrounding private property can be appropriately mitigated;

(iii) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The City shall establish fees after considering comparable rates in other cities, potential expenses, risks to the City, and other appropriate factors;

(iv) The applicant will submit a letter of credit, performance bond, or other

security acceptable to the City to cover the costs of removing the facilities;

(v) The antennas or tower will not interfere with other users who have a higher priority as discussed in this section;

(vi) The lease shall provide that the applicant must agree that in the case of a declared emergency or documented threat to public health, safety or welfare and following reasonable notice, the City may require the applicant to remove the facilities at the applicant's expense;

(vii) The applicant must reimburse the City for any related costs which the City incurs because of the presence of the applicant's facilities;

(viii) The applicant must obtain all necessary land use approvals; and

(ix) The applicant must cooperate with the City's objective to encourage collocations and thus limit the number of cell sites requested or camouflage the site.

(b) Special requirements for Parks. The use of City-owned parks for personal wireless service facilities brings with it special concerns due to the unique nature of these sites. The placement of personal wireless service facilities in a park will be allowed only when the following additional requirements are met:

(i) The City Manager or the City Manager's designee has reviewed and made a recommendation regarding proposed personal wireless service facilities to be located in the park and this recommendation must be forwarded to the City Council for consideration;

(ii) In no case shall personal wireless service facilities be allowed in designated critical areas unless they are co-located on existing facilities.

(iii) Before personal wireless service facilities may be located in public parks, consideration shall be given to visual impacts and disruption of normal public use;

(iv) Personal wireless service facilities may be located in public parks that are adjacent to an existing commercial or industrial zone;

(v) Personal wireless service facilities may be located in park maintenance facilities.

(vi) Personal wireless facilities may only be located in public parks if the applicant presents evidence sufficient to satisfy the City Manager that such facilities will be appropriately designed, sited, and constructed to protect the health, safety and welfare of park users.

(c) Required submittals. Application for conditional use permits, building permits, and other related requests may include any combination of site plans, surveys, maps, technical reports, or written narratives necessary to convey the following information in addition to the requirements of other applicable ordinances:

(i) Photosimulations of the proposed facility from affected residential properties and public ways at varying distances;

(ii) A site elevation and landscaping plan indicating the specific placement of the facility on the site, the location of existing structures, trees, and other significant site

features, the type and location of plant materials used to screen the facility, and the proposed color(s) of the facility;

(iii) A signed statement indicating that (a) the applicant and landowner agree they will diligently negotiate in good faith to facilitate collocation of additional personal wireless service facilities by other providers on the applicant's structure or within the same site location and (b) the applicant and/or landlord agree to remove the facility within sixty (60) days after abandonment;

(iv) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by FCC Paragraph 1.1307, or, in the event that an FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment;

(v) A site plan clearly indicating the location, type and height of the proposed tower and antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures;

(vi) A current map and aerial showing the location of the proposed tower, a map showing the locations and service areas of other personal wireless service facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the City;

(vii) Legal description of the parcel, if applicable;

(viii) The approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;

(ix) A landscape plan showing specific landscape materials;

(x) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

(xi) A letter signed by the applicant stating the tower will comply with all FAA regulations and EIA Standards and all other applicable federal, state and local laws and regulations;

(xii) A statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users;

(xiii) Certification that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions;

(xiv) The telecommunications company must demonstrate that it is licensed by the FCC if required to be licensed under FCC regulations;

(xv) The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an FCC licensed telecommunications provider if such telecommunications provider is required to be licensed by the FCC;

(xvi) A full site plan shall be required for all sites, showing the tower, antenna, antenna support structure, building,

fencing, buffering, access, and all other items required in this Title. The site plan shall not be required if the antenna is to be mounted on an existing structure; and

(xvii) At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the City.

**20.07.080. Collocation and Eligible Facilities Requests.**

(1) To minimize adverse visual impacts associated with the proliferation of towers, collocation of personal wireless service facilities and Eligible Facilities Requests to expand facilities on existing or new towers are as follows:

(a) Proposed facilities may, and are encouraged to, co-locate onto existing towers. Such collocation is permitted by right and new or additional conditional use permit approval is not required, except that any other permit, license, lease, or franchise requirements must be satisfied, and the collocation must be accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this Title.

(b) The conditional use permit requirement for a facility may be waived in all zones if the applicant locates the antenna on an existing structure or an existing tower or expands an existing facility by an Eligible Facilities Request. The applicant must submit detailed plans to the community development department for a collocation permit to determine if the conditional use permit process and public hearing can be waived. No building permit will be issued until approval is granted by a collocation permit or conditional use permit.

(c) The City may deny an application to construct new facilities if the applicant has not shown by substantial evidence that it has made a diligent effort to mount the facilities on an existing structure or tower or expand an existing facility by an Eligible Facilities Request.

(d) To reduce the number of antenna support structures needed in the City in the future, new proposed support structures shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

(e) Unless collocation is not feasible, an applicant's site plan shall reserve an area for other providers' equipment and/or probable expansion or modification of the applicant's proposed facility near the base of the applicant's tower. A first right-of-refusal (which is either executed or maintained while the provider's personal wireless facilities and services are in use) to lease the area at the base of the tower or mount for other providers will meet the reservation requirement.

(f) To provide further incentive for collocation or expansion by an Eligible Facilities Request, an existing tower may be modified through a collocation or Eligible Facilities Request permit which may be issued by the City Manager or the City Manager's designee. See DMMC 20.10.020 et. seq.

(g) While collocation and the requirements herein are encouraged, collocation shall not take precedence over the construction of shorter towers with appropriate screening.

(2) Providers with existing facilities capable of accommodating collocation within the City of Des Moines are hereby required to negotiate in

good faith with any applicant seeking to co-locate telecommunications equipment on their facilities.

If an applicant is unable to reach a collocation agreement with a provider owning or controlling an existing facility within the City as the result of terms and conditions which are believed to be in bad faith and anticompetitive, the aggrieved applicant may, upon payment of a filing fee to be established by the City Manager, petition the City Manager to make a determination as to whether such terms and conditions should be deemed in bad faith and anticompetitive. If the City Attorney concludes that the challenged terms and conditions of any collocation agreement are in bad faith and anticompetitive, the City Attorney may institute proceedings before the Hearing Examiner seeking revocation of any or all land use or other authorizations granted by the City with respect to the existence or operation of such facility; however, the City may, at its sole discretion, withdraw or refrain from initiating a revocation proceeding until such time as the aggrieved applicant makes payment or reaches and complies with an agreement with the City setting a schedule for payment of all reasonably anticipated costs to be incurred by the City in a revocation proceeding before the Hearing Examiner.

Upon receipt of a revocation recommendation from the City Attorney, the Hearing Examiner shall conduct all necessary proceedings and reach a determination as to whether the terms and conditions of the challenged collocation agreement are in bad faith and anti-competitive. The Hearing Examiner shall have authority to revoke any and all land use permits, or other authorizations granted by the City with respect to the existence and operation of telecommunications facilities owned or controlled by any provider found to be in violation of this section or impose lesser sanctions as provided in DMMC 20.06.280. Upon a determination by the Hearing

Examiner to revoke permits or authorizations enabling the existence or operation of any facility(ies) or improvement(s) located within the City, the affected provider shall remove such facility(ies) in the time and manner provided in DMMC 20.06.290.

Notwithstanding provisions found elsewhere in City codes, appeals of any Hearing Examiner decision including decisions to site wireless communication facilities to be located outside of the Public Rights-of-Way by conditional use permit issued under this section shall be before the King County Superior Court, and must be filed and served within twenty-one (21) days of the issuance of such decision as provided in RCW 36.70C.040(3). Administrative permits issued pursuant to DMMC 20.07.070 or 20.07.240 are not land use decisions and are not subject to review under chapter 36.70C RCW.

**20.07.090. Design criteria.**

(1) As provided above, new facilities shall be designed to accommodate collocation, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.

(2) Facilities shall be architecturally compatible with the surrounding buildings and land uses in the zoning district and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the site.

(a) Setback. A tower's setback shall be measured from the base of the tower to the property line of the parcel on which it is located. In residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to 100 percent of tower height as measured from ground level, except for unusual geographic limitations or other public

policy considerations, as determined in the City's sole discretion. All other towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts, unless there are unusual geographical limitations or other public policy considerations as determined in the sole and absolute discretion of the City.

Such considerations shall include by way of illustration and not limitation, but are not limited to:

(i) Impact on adjacent properties;

(ii) Alternative sites for personal wireless facilities; and

(iii) The extent to which screening and camouflaging will mitigate the effects of the personal wireless facilities.

(b) View Corridors. Due consideration shall be given so that placement of towers, antennas, and personal wireless service facilities do not obstruct or significantly diminish views of Mt. Rainier, Puget Sound or the Olympic Mountains.

(c) Color, marking, lights, signals and signs. Towers shall have a color generally matching the surroundings or background that minimizes their visibility unless a different color is required by the FCC or FAA.

No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Should marking be required, in cases where there are residents located within a distance which is 300 percent of the height of the tower, then dual mode lighting shall be requested from the FAA and the

residents located within said distance shall be notified.

(d) Equipment and structures. Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

(i) The maximum floor area is 300 square feet and the maximum height is limited to the height of a one-story building which design is consistent with the neighborhood. Except in unusual circumstances or for other public policy considerations the equipment building may be located no more than fifty (50) feet from the tower or antenna, with any additional distance to be left to the discretion of the City Manager. Depending upon the aesthetics and other related issues, the City, in its sole discretion, may approve multiple equipment structures or one or more larger structures.

(ii) Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means to satisfy City standards for Type I landscaping.

(iii) Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof-mounted antenna may also be located within the building on which the antenna is mounted.

(iv) In instances where equipment buildings are located in residential zones, equipment buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

(v) Equipment buildings, antennas, and related equipment shall occupy no more

than 25 percent of the total roof area of the building the facility is mounted on, which may vary in the City's sole discretion if collocation and an adequate screening structure is used.

(vi) Noise from antenna equipment should be reduced where possible to 30 Db. Continual low frequency sounds such as hums, clicks, buzzes and the like should be avoided.

The use must be approved on a site plan or final development plan, as applicable.

(e) Federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then personal wireless service providers governed by this Title shall bring their towers and antennas into compliance with the revised standards and regulations within three months of their effective date or the timelines provided by the revised standards and regulations, whichever time period is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided or permitted by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the City to remove a provider's facilities at the provider's expense.

(f) Building codes - Safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards

and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within thirty (30) days, the City may remove the tower at the owner's expense.

(g) Structural design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and to all applicable construction/building codes. Further, any improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

(h) Fencing. A well-constructed wall, or wooden fence not less than six feet in height from the finished grade shall be provided around each personal wireless service facility. Fencing should be colored or should be of a design which blends into the character of the existing environment. Access to the facility shall be through a locked gate. The use of chain link, plastic, vinyl, or wire fencing is prohibited unless it is fully screened from public view through the use of either climbing evergreen shrubs on the fence or evergreen shrubs equal to the height of the fence and consistent with the City's Type I landscaping standards.

(i) Tower and antenna height.

(i) All applicants for approvals and/or permits required by the City for towers or antennas must demonstrate through engineering evidence that the height of the proposed tower and/or antenna is the minimum height necessary

to satisfactorily fulfill the facility's intended function.

(ii) No tower or antenna that is taller than the minimum height required, based on engineering evidence, shall be approved or otherwise permitted. Engineering evidence reviewed and considered by the City may include information obtained through the third-party review process set forth in DMMC 20.07.290.

(iii) No tower or mount shall exceed eighty (80) feet; provided, that:

(A) A conditional use permit may be issued by the Hearing Examiner to allow a tower or mount up to but not exceeding 120 feet if the applicant can show by clear and convincing evidence that the additional height is necessary to allow for collocation of one or more additional facilities on the proposed tower; and

(B) The applicant presents a binding agreement with another provider ready, willing and able to collocate its facility on the proposed tower at or within a reasonable time of its completion, but not more than 90 days following completion, except for conditions or circumstances outside the control of the parties wishing to effectuate the collocation agreement related to the tower at issue; or the applicant presents a construction plan calling for collocation of more than one facility belonging to the applicant on the proposed tower at or within a reasonable time of its completion, but not more than ninety (90) days following completion, except for conditions or circumstances outside the control of the applicant; and

(C) In the event that collocation of an additional facility has not occurred on any tower granted approval for a height

exceeding 80 feet within the time period set forth above, the City may order removal or modification of the facility at the owner's expense as provided in this Title; and

(D) In considering the application for a conditional use permit under this section, the Hearing Examiner shall evaluate the matter and impose conditions consistent with subsections (2)(i), (i) and (ii) of this section and other relevant provisions of this Title.

(j) Antenna support structure safety. The applicant shall demonstrate that the proposed antenna and support structure are safe, and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

(k) Required parking. If the cell site is fully automated, the location for one parking space for maintenance visits shall be designated on the site plan. If the site is not automated, adequate parking shall be reserved on the site plan for on-site employees.

(l) Tower separation. In no case shall towers be located closer than five hundred (500) feet from another tower whether it is owned or utilized by applicant or another provider, unless the City Manager designates areas where multiple towers can be located in closer proximity following a third-party review initiated upon receipt of an application warranting such study. The term "tower" as used in this section shall not include existing, replacement or new utility poles or light standards used to site small cell facilities when located within the public rights-of-way.

(m) Antenna criteria. Antenna on or above a structure shall be subject to the following:

(i) The antenna shall be architecturally compatible with the building and wall on which it is mounted and shall be designed and located so as to minimize any adverse aesthetic impact.

(ii) The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless it must be for technical reasons. In no event shall an antenna project be more than 16 feet above the roof line including parapets.

(iii) The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

(iv) The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building but may not project any higher than the enclosure.

(v) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

(vi) The structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

(vii) Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's sole discretion.

(viii) For installations or buildings greater than thirty (30) feet in height, see other applicable provisions of this Title. In addition to the other requirements of this Title, on buildings thirty (30) feet or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

(A) The City finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.

(B) No portion of the antenna or base station causes the height of the building to exceed the limitations set forth herein.

(C) The antenna or antennas and related base stations cover no more than an aggregate total of twenty-five percent (25%) of the roof area of a building, which may vary in the City's sole discretion, if co-locating and an adequate screening structure are used.

(D) Roof-mounted antenna and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

(E) No portion of the antenna may exceed sixteen (16) feet above the height of the existing building.

(ix) If a proposed antenna is located on a building or a lot subject to a site review, approval is required prior to the issuance of a building permit.

(x) No antenna shall be permitted on property designated as an individual landmark or as a part of a historic district unless such antenna has been approved in accordance with City ordinances.

(xi) No personal wireless service provider or lessee or agent thereof shall fail to cooperate in good faith to accommodate co-location with competitors. If a dispute arises about the feasibility of co-locating, the City Manager may require a third party technical study, at the expense of either or both parties, to resolve the dispute.

(xii) No personal wireless service provider or lessee shall fail to assure that its antenna complies at all times with the current applicable FCC standards. After installation, but prior to putting the antenna in service, each provider shall submit a certification by an independent professional engineer to that effect. In the event that an antenna is co-located with another antenna, the certification must provide assurances that FCC approved levels of electromagnetic radiation will not be exceeded by the collocation.

(xiii) No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to, public safety, television, and radio broadcast signals.

(xiv) No person shall locate an antenna or tower for wireless communications services upon any lot or parcel except as provided in this division of chapter 20.07 DMMC.

(3) Setback from street. Unless there are unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, no such antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located unless otherwise waived or exempt.

(4) Guy wires restricted. No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing building to which such antenna, antenna array, or support structure is attached; however, the City Manager may permit the temporary use of guy wires where such use is required in an emergency or other circumstances that are in the interest of public health and safety, but in no event should such temporary use be allowed for more than thirty (30) days.

**20.07.100. Permits required.** Where a tower or antenna support structure will be 60 feet or less in height, and such facility is not otherwise exempt from coverage by this Title, in addition to the other provisions of this Title, an applicant will be required to obtain design review approval as set forth in chapter 18.235 DMMC. In the event that a proposed tower or antenna support structure will be located in a residential zone, or an unscreened tower in the downtown area, or will be more than sixty (60) feet in height, in addition to the other provisions of this Title, an applicant will be required to obtain a conditional use permit. With respect to the placement of antenna on a tower or antenna support structure, the requirements for a conditional use

permit or design review will be applicable based on the height of the tower and antenna or mount and antenna unless this Title provides other requirements to the contrary.

To meet the standards of this Title, a personal wireless service facility must also comply with the other requirements under this Title and, for antennas attached to the roof or sides of a building at least thirty (30) feet in height, an existing tower, a water tank, or a similar structure:

(1) Antennas mounted on existing structures in the commercial zones, not exceeding 16 feet in height, may be permitted following design review approval as provided in chapter 18.235 DMMC and submittal of an affidavit of compliance with this Title and other City regulations.

(2) Antennas, antenna arrays, and support structures not on publicly owned property shall not extend more than 16 feet above the highest point of the structure on which they are mounted. The antenna, antenna array, and their support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of one hundred (100) miles per hour without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

(3) To the extent that antennas are attached to electric, phone or light poles and such antennas are no more than two (2) feet in height, collocation and building permits will be required, but such antenna(s) shall not be subject to setbacks and screening requirements.

**20.07.110. Inspection requirements.** Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in

accordance with the EIA and FCC Standards and within 60 days of the inspection file a report with the City Manager. Submission of a copy of FCC required, and duly filed, safety inspection report, or the facility operator's maintenance reports for the prior twelve (12) months in the event no FCC report is required for such year, shall satisfy the requirements of this section.

**20.07.120. Landscaping/Screening.**

(1) Landscaping. Landscaping, as described herein, shall be required to screen personal wireless service facilities as much as possible, to soften the appearance of the cell site. The City may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping if they achieve the same degree of screening as the required landscaping. If the antenna is mounted flush on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

(2) Screening. The visual impacts of a personal wireless service facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering shall be required around the perimeter of the tower and accessory structures, except that the City may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

(3) Landscaping and screening requirements may be waived by the City where such measures are not in the public interest.

(4) In the event that landscaping and/or screening is not maintained at the required level, the City, after giving thirty (30) days' advance written notice, may maintain or establish the landscaping and/or screening. All expenses incurred by the City under this section shall constitute a civil debt owing to the City jointly and severally by the owner(s) and lessee(s), which debt shall be collectible in the same manner as any other civil debt.

## **DIVISION II**

### **SMALL CELL DEPLOYMENT: FRANCHISE AND SMALL CELL PERMITS**

**20.07.130. Overview of Division II.** In order to manage its right-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment while complying with the requirements of State and federal law, the City of Des Moines adopts this process for the deployment of small cell and microcell technology. Service providers who seek to utilize the public right-of-way for small cell deployment in order to enhance wireless communication, data transmission or other related services to the citizens of the City must have a valid franchise agreement to provide the specific service which utilizes the right-of-way and a small cell permit to deploy the technology. Entities with franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall utilize the processes set forth in Title 20 and implementing small cell permits to deploy their technology and obtain design approval of specific installations. The small cell permit process administers deployment under a valid franchise. An entity without a franchise agreement may apply concurrently for a franchise and adjunct small cell permit which shall be processed

concurrently as one Master Permit within the meaning of RCW 35.99.010(3) and 35.99.030. For entities with a valid franchise, See DMMC 20.07.170.

(1) Nothing in this ordinance revises or diminishes the rights and obligations of an existing franchise.

(2) The term "small cell deployment" shall include the deployment of small cell facilities, microcells and small cell networks as those terms are defined by RCW 80.36.375 provided that microcells may not be deployed in the public right-of-way, except as provided in Division I of this chapter.

(3) See chapter 20.01 DMMC for additional definitions.

**20.07.140. Application.** Applicants shall apply using the City's franchise application form and submit a fee deposit commensurate with the estimated administrative costs of processing an application for a franchise. The City Manager or his or her designee ("City Manager") is charged with administration of small cell deployments and other wireless communication review processes established under chapter 20.07 DMMC. Service providers seeking to utilize the City's right-of-way for small cell deployments shall specify geographic boundaries for the small cell deployment described in the application. The applicant may designate the entire City at its discretion or any portion thereof as the franchise boundary. Phased development is permitted, and an applicant is encouraged to specify at least the initial small cell deployment in its application.

The following information shall be provided by all applicants for franchises seeking to utilize small cell deployment. Existing franchisees who seek to utilize a small cell deployment to expand or

implement an existing franchise shall provide the information as a part of a small cell permit application for small cell deployment.

**(1) Designation of facilities.** The application shall provide specific locational information including GIS coordinates of all facilities to the extent known and specify whether and where small cell facilities are to be located on existing utility poles including City-owned light standards (included in the definition of utility pole), or will utilize replacement utility poles, new poles, towers, and/or other structures. Conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified, to the extent known, regardless of whether the additional facilities are to be constructed by the applicant or leased from an infrastructure provider. Detailed schematics and visual renderings of the facilities shall be provided by the applicant. Failure to provide sufficient detail may result in a later finding of a significant change in the facility if significant elements of the facility were not shown on the originally approved franchise exhibit. Failure to include significant elements may also result in the requirement that new or undocumented elements complete the approval processes detailed in this chapter.

**(2) Implementation.** Absent specific approval of sites and facilities in a franchise, the rights granted under the franchise are implemented through the issuance of a small cell permit. The franchise application may be accompanied by one or more applications for a small cell permit to deploy small cells. An initial franchise, including specific sites and facilities and/or a related small cell permit application(s) shall be processed concurrently as one Master Permit.

(a) Up to fifteen (15) sites may be

specified in one small cell permit application for processing. The City Manager may allow up to five (5) additional sites in the same application in order to consider small cell sites within one logical service area in one application

(b) Issuance of a small cell permit to install a small cell deployment shall be contingent upon approval of a franchise or the possession of a valid franchise.

(c) If more than one application for a small cell permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application should be considered first. All small cell permits which are submitted in conjunction with a franchise application shall be considered as one Master Permit. Any element of a deployment which qualifies as either an Eligible Facilities Request or a collocation pursuant to chapter 20.10 DMMC shall be specifically designated by the applicant and may be addressed separately by the City Manager in order to comply with the shot clocks established by federal law.

(d) The City Manager may approve, deny or conditionally approve all or any portion of the sites and/or facilities proposed in the small cell permit application.

(e) Any application for a franchise or small cell permit which contains an element which is not exempt from SEPA review shall comply with chapter 16.05 DMMC.

(f) Radio Frequency ("RF") Certification. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small cell deployment 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 cell facility and associated wireless backhaul will operate. An existing franchisee applying for a small cell permit for small cell deployment shall provide an RF certification for all facilities included in the deployment which are to be installed by the Franchisee. If facilities necessary to the Small Cell Deployment are to be provided by another franchisee, the right-of-way use permit and Franchise to deploy such facilities shall be contingent on submittal of an RF Certification by the other franchisee for any such facilities which produce RF emissions. If such facilities will emit RF emissions, this additional RF Certification shall address the cumulative impact of the RF emissions and certify compliance with federal requirements. The initial franchisee and all implementing right-of-way use permits shall be contingent on such secondary certification. The applicant or franchisee shall immediately remove or repair any facilities that exceed FCC RF Emission requirements. A modification of a facility by an Eligible Facilities Request requires a new RF certification.

(g) Regulatory authorization. Issuance of the Use Permit for the facilities shall also be contingent upon the applicant's provision of proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

(h) Completeness; Franchise and Small Cell Applications. The City Manager or his/her designee shall review an application for completeness and notify the applicant within thirty (30) days of submission whether the application is complete, provided, however, that an applicant may consent to a different completeness review period. A service provider may resubmit an incomplete application within sixty (60) days of notice by the City Manager. Failure to resubmit an application in

a timely manner shall be deemed a withdrawal of that application. An applicant shall be notified in writing of the approval or denial of the application. No application shall be deemed complete without the fee deposit set by the City Manager.

**20.07.150. Review process.** The following provisions relate to applications for a franchise or small cell permit for small cell deployments.

**(1) Review of facilities.** Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 47 USC 332 and applicable case law. Applicants for franchises and the small cell permits which implement the franchise shall be treated in a competitively neutral and non-discriminatory 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. Franchise and small cell permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

**(2) Concealment.** In any zone not designated by DMMC 20.07.260 for design review ("design review"), applications for a small cell permit or for facilities designated within a franchise, the City may permit small cell deployment on existing utility poles and replacement poles in accordance with the City's generally applicable pole design and concealment standards adopted in Division III of this chapter and DMMC 20.07.240. Accordingly, small cell facilities installed pursuant to this concealment authorization may only be expanded pursuant to an Eligible Facilities Request if the City Manager determines that such expansion would

not defeat the concealment elements of the facilities.

**(3) Design review.** Small cell deployment in Design Zones and Underground Districts, as well as certain new or replacement facilities, are subject to design review. See DMMC 20.07.260.

**20.07.160. Public comment.** The City shall provide notice of a complete application for a franchise on the City's website with a link to the franchise application. This notice requirement shall also apply to existing franchisees applying for a small cell permit for small cell deployment. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. These meetings are for the public's information and are neither hearings nor part of any land use or appeal process.

**20.07.170. Facilities designated in the Franchise and/or small cell permit application.** Small cell deployments may be approved by reference to exhibits in an approved franchise. Approval of the franchise shall be deemed to approve the site and the design of small cell facilities set forth in the franchise. This approval is limited to the specific location, facility and design elements shown on the exhibits to the franchise. Any element not shown on an exhibit must be approved by the governing review processes designated herein. All facilities shall comply with the concealment standards adopted by the City in DMMC 20.07.150(2) and/or 20.07.240. An existing franchisee may, at its option:

(1) Apply to amend the existing franchise to designate additional sites for small cell deployment, as well as approve the small cell facilities to be installed and the concealment

measures to be utilized; or

(2) Apply for a small cell permit which may include:

(a) Small cell facilities to be installed on existing utility poles and which utilize the generally applicable design and concealment standards established by DMMC 20.07.240; and/or

(b) Small cell facilities for placement on new utility poles or installations in a Design Zone or Undergrounded Areas, utilizing the design approval procedures set forth in DMMC 20.07.240(6).

**20.07.180. Small cell permit and minor deviations.**

(1) The City Manager shall review applications for small cell permits for small cell deployments approved by a franchise or described in a concurrent franchise application. The City Manager may authorize minor deviations in the small cell permit from the dimensional design and concealment technologies referenced in the exhibits to the franchise or design standards.

(2) A deviation in height of the pole of up to ten (10) feet above the height of the existing pole or a height providing the minimum clearance necessary to provide safety clearance may be permitted. Replacement poles of up to ten (10) feet above the height of the existing pole or minimum required safety clearance may also be permitted when required for clearance or separation by the pole owner or applicable electrical code.

(3) Deviations in the dimensions or volume of small cell facilities which do not exceed the cumulative total provided by the definition of a

small cell or microcell facility in RCW 80.36.375 may be considered a minor deviation when an applicant replaces components of an existing, approved small cell facility. Provided, however, that in each instance the new or revised facilities shall not defeat the concealment features set by the City's generally applicable pole design standard adopted pursuant to the franchise, DMMC 20.07.240.

(4) The decision of the City Manager to approve a small cell permit with a minor deviation, if any, shall be final and is not subject to appeal under City code or through further legislative review.

**20.07.190. Significant deviations.** Any request for significant deviations from the approved small cell facilities design designated in the franchise, small cell permit or City's design and concealment standards shall be considered by the City Manager under the procedures applicable to a Type I land use action (see chapter 18.20 DMMC), and pursuant to the timelines established in chapter 20.10 DMMC. An applicant seeking approval of a new pole in a Design Zone or Underground District designated by chapter 20.07.260 DMMC shall be subject to the same review process.

**20.07.200. Wireless communication and small cell deployment facility approvals and processes.** Approval of a Franchise, small cell permit and/or other approval referenced in this chapter are conditioned on the following requirements:

(1) Satisfy applicable bulk requirements such as noise and light regulations.

(2) Comply with adopted design and concealment standards, or the concealment element design approved for replacement utility poles and new utility poles in a Design Zone or Underground District.

(3) Obtain the written approval of the owner of any utility pole for the installation of its facilities on such utility pole. Approval of a franchise does not authorize attachment to City-owned utility poles or other structures.

(4) Unless specifically provided for in a franchise, obtain a lease from the City to utilize the City's ground space for the installation of any new pole, a replacement utility pole over sixty (60) feet or to locate any new ground-based structure, base station or other attendant equipment on City right-of-way or City property;

(5) Comply with all City construction standards and State and federal codes when operating in the right-of-way and obtain a required permit to enter the right-of-way.

(6) Installation of a facility which is not exempt from SEPA review shall be processed in accordance with the provisions of chapter 16.05 DMMC.

(7) Small Cell facilities approved pursuant to this chapter shall be considered as an outright permitted use when located within the right-of-way.

**20.07.210. Additional review procedures; Compliance with state processing limitations.**

Wireless communication facilities in Design or Underground Districts are subject to review as provided in chapter 20.07 DMMC. The provisions of chapter 20.07 DMMC shall be interpreted and applied to insure compliance with chapter 35.99 RCW and federal law.

(1) An application for a franchise seeking general permission to utilize the public right-of-way for telecommunications shall be processed in

compliance with the time limits established by RCW 35.99.030(1)(b) and is a Master Use Permit within the meaning of RCW 35.99.010 (3).

(2) An application to deploy specific new small cell facilities at specific locations in the public right-of-way which have not been previously approved as a part of a franchise approval, is a police power exercise governed by RCW 35.99.040(2) and shall be governed by the time limits established by federal law for new facilities, provided, however, that:

(a) The City will endeavor to process the application within ninety (90) days;

(b) Applications qualifying as Eligible Facilities Requests shall be processed as provided in chapter 20.10 DMMC.

(3) A small cell permit application submitted concurrently with an application for a new or amended franchise shall be considered as an application for a consolidated Master Use Permit and shall be processed with the time limits established by RCW 35.99.030(1)(b).

(4) A franchise for a telecommunications franchise, a consolidated Master Permit for telecommunications (Franchise and small cell permit) or a small cell permit which authorizes deployment of a specific facilities at specific locations are implemented through the issuance of right-of-way use permits. These authorizations to enter the public right-of-way to install specifically approved small cell facilities are use permits within the meaning of RCW 35.99.010(8) and shall be issued within thirty (30) days of receipt of a complete application as required by RCW 35.99.030(2), provided that requests for minor deviations shall be processed by the City Manager pursuant to DMMC 20.07.180 within the same time frame.

### DIVISION III

#### SMALL CELL DESIGN STANDARDS

**20.07.220. Wireless communication design standards – Small cell facilities.** This Division of chapter 20.07 DMMC provides design and review procedures for communications facilities in the Public Rights-of-Way. These provisions are intended to provide objective design criteria to assist in minimizing the visually obtrusive impacts which can be associated with wireless communications facilities and to encourage creative approaches in the location and construction of wireless communications facilities.

**20.07.230. Small cell deployment.** Small cell deployment includes small cell facilities and small cell networks provided that microcells shall be permitted only in accordance with Division I of this chapter. The following provisions establish design and concealment standards for small cell deployments, provided, however, that any small cell or small cell network component which is not exempt from SEPA review shall comply with chapter 16.05 DMMC.

**(1) Existing or replacement utility poles in areas other than Design Zones and underground districts.** Eligible small cell facilities permitted under the provisions of a franchise approval shall be considered to have satisfied the design and concealment standards when installed on existing utility poles.

**(2) Small cell deployments on existing utility poles not approved pursuant to a franchise.** Small cell deployments on existing utility poles which have not been approved as an exhibit to the franchise or as a minor deviation there to, shall

comply with the provisions of DMMC 20.07.240 and be approved pursuant to a permit issued as provided in this Chapter.

**(3) Replacement utility pole - street lighting.** With the express permission of the City, a replacement utility pole or a new utility pole may be permitted in the form of a new streetlight standard. The design of the street light standard shall be in accordance with adopted City construction standards when located outside of a Design Zone or underground district. Replacement utility poles/street light standards located within a Design Zone shall conform to the adopted streetscape design standard for the Design Zone. Wherever technologically feasible, all equipment and cabling shall be internal to the replacement street lighting standard.

**(4) Undergrounded areas.** In areas in which utilities have been undergrounded, a service provider or infrastructure company desiring to locate any above-ground infrastructure in support of a small cell deployment shall submit a concealment element plan in accordance with the provisions of DMMC 20.07.240(6).

**(5) Undergrounded areas in urban designed corridors.** In areas in which utilities have been undergrounded and improved as urban designed corridors, a service provider or infrastructure company desiring to locate any aboveground infrastructure shall provide a separate, stand-alone pole that matches the urban design theme of the corridor. Pole design to be approved by the City pursuant to DMMC 20.07.240(6)

**20.07.240. Design and concealment standards for small cell deployments.** Small cell deployments whether permitted on the right-of-way pursuant to a franchise or in accordance with this chapter shall conform to the following design standards:

**(1) Small cell facilities attached to non-wooden poles.** Small cell facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right of way or poles outside of the right of way shall conform to the following design criteria:

(a) Antennas and the associated equipment enclosures shall be sited and installed in a manner which minimizes the visual impact on the streetscape either by fully concealing the antennae and associated equipment fully within the pole or through a concealment element plan which provides an equivalent or greater impact reduction. This requirement shall be applied in a manner which does not dictate the technology employed by the service provider nor unreasonably impair the technological performance of the equipment chosen by the service provider.

(b) All conduit, cables, wires and fiber must be routed internally in the light 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.

(c) An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears 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.

(d) Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

(e) The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary for adequate clearance from electrical wires, whichever is greater.

(f) The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements, ADA requirements, and if a replacement light standard then with the City's lighting requirements.

(g) The use of the pole for the siting of a small cell facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

**(2) Wooden pole design standards.** Small cell facilities located on wooden poles 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 cell facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (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 ten (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 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 may either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.

(d) 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.

(e) Panel antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.

(f) 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 (3) cubic feet in volume, with a cumulative total antenna volume not to exceed nine

(9) cubic feet, unless additional volume is technically necessary which in such cases the total volume may not exceed twelve (12) cubic feet.

(g) A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection 2(a) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (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 twelve (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.

(h) An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) 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.

(i) 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 (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

(j) Equipment for small cell facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted

pursuant to subsection (5)(a). The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure may not exceed seventeen (17) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed seventeen (17) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole if such banners or road signs are allowed by the pole owner.

(k) An applicant who desires to enclose its antennas and equipment within a unified enclosure may do so, provided that such unified enclosure does not exceed four (4) cubic feet. 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. The unified enclosure may not be placed more than six (6) inches from the surface of the pole unless a further distance is technically required and confirmed in writing by the pole owner.

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

(m) The use of the wooden pole for the siting of a small cell facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

(n) 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 cell.

**(3) Small cell facilities attached to existing buildings.** Small cell facilities attached to existing buildings, shall conform to the following design criteria:

(a) Small cell 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 cells shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.

(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 cell facilities shall be painted and textured to match the adjacent building surfaces.

**(4) Small cell facilities mounted on cables strung between existing utility poles shall conform to the following standards.**

(a) Each strand mounted facility shall not exceed (3) cubic feet in volume;

(b) Only one strand mounted facility is permitted per cable between any two existing poles;

(c) The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than six (6) feet from the pole unless a greater distance is technically necessary or required 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 such strand mounted facilities is not permitted, except when placed in pre-existing equipment cabinets;

(f) Pole mounted equipment for strand mounted facilities shall meet the requirements of for pole mounted small cells; and

(g) Such strand mounted devices must be installed to cause the least visual impact and with the minimum exterior cabling or wires (other than the original strand) necessary to meet the technological needs of the facility.

**(5) General requirements.**

(a) Ground mounted equipment in the rights of way is prohibited unless such facilities are placed under ground 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. Generators located in the rights of way are prohibited.

(b) No equipment shall be operated so as to produce noise in violation of Chapter 18.185 DMMC.

(c) Small cell facilities are not permitted on traffic signal poles.

(d) Replacement poles and new poles shall comply with the American with Disabilities Act (ADA), City construction and sidewalk clearance standards, and state and federal regulations in order to provide a clear and safe passage within the rights-of-way.

(e) Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.

(f) The design criteria as applicable to small cell facilities described herein shall be considered concealment elements and such small cell facilities may only be expanded upon an eligible facilities request described in Chapter 20.10 DMMC, when the modification does not defeat the concealment elements of the facility.

(g) No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna, and any such signage on equipment enclosures shall be of the minimum amount possible to achieve the intended purpose; provided that, signs are permitted as concealment element techniques where appropriate.

(h) 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 a concealment element plan.

(i) Side arm mounts for antennas or equipment are prohibited.

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

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

(l) The City may consider the cumulative visual effects of small cells 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 not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the service provider.

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

**(6) New poles in the rights-of-way for small cell facilities and installations in a design district.**

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

(i) The proposed small cell facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights of way such as a public park, public property, building, transmission tower or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;

(ii) The proposed wireless communications facility receives approval for a concealment element design, as described in subsection (6)(b) below;

(iii) The proposed wireless communications facility also complies with Shoreline Master Program and SEPA, if applicable; and

(iv) No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance, except when determined to be exempt pursuant to said ordinance.

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

(i) The concealment element design should seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including to the extent

technically feasible similar height. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color and texture – or the appearance thereof – as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure or otherwise integrated into the design of the structure. Use of a unified enclosure equal to or less than four (4) cubic feet in volume may be permitted in meeting these criteria.

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

(c) Even if an alternative location is established pursuant to subsection 6(a)(1) the conditional use permit process 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.

(d) 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 site-specific 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 the overall height of the replacement pole and the proposed wireless communications facility is more than sixty (60) feet.

(e) Installation of small cell facilities in a Design Zone [20.07.260 DMMC] shall be permitted by an administrative approval of a concealment plan utilizing the design and concealment standards contained in this chapter.

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

**20.07.260. Designated Design Zones.** The following zones are designated as Design Zones for the purpose of the application of the provisions of this chapter of the Des Moines Municipal Code.

- (1) Pacific Ridge-Commercial (PR-C);
- (2) Pacific Ridge Residential (PR-R); and
- (3) Marina District Planning Area.

The concealment element design developed pursuant to DMMC 20.07.240(6) shall utilize the Design Guidelines adopted for the design districts by Ordinance Nos. 1486 and 1268 respectively.

**20.07.270. Review of wireless communications facilities other than small cell deployments.** Other wireless communication facilities shall be reviewed

pursuant to this chapter, including wireless communication facilities outside of the Public Rights of Way and all wireless communication facilities other than small cells when located in the public right-of way.

(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 small cell facility which 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. See DMMC 20.07.140(2)(f).

(2) Wireless communication facilities shall be subject to the requirements of this Chapter to the extent that such requirements (i) do not unreasonably discriminate among providers of functionally equivalent services, and (ii) do not have the effect of prohibiting personal wireless services within the City.

#### **DIVISION IV**

#### **GENERALLY APPLICABLE REQUIREMENTS**

#### **20.07.280. Nonuse/abandonment.**

(1) **Abandonment.** No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the City of Des Moines by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the City's discovery of discontinuation of operation. Upon such abandonment, the provider shall have 60 days or additional period of time determined

in the reasonable discretion of the City within which to:

(a) Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

(b) In the event that abandonment as defined in this Title occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the effective radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six months from the date of effective abandonment to co-locate another service on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove that portion of the tower which exceeds the minimum height required to function satisfactorily. Notwithstanding the foregoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment. However, in the event that there is a physical reduction in height of substantially all of the provider towers in the City or surrounding area then all of the towers within the City shall similarly be reduced in height.

(2) Dismantle and Removal Facility. If the tower, antenna, foundation, base station, replacement pole and/or other facility is not removed within the 60-day time period or additional period of time allowed by the City, the City may remove such tower, antenna, foundation, base station, replacement pole and/or other facility at the provider's expense. If there are two or more providers co-locating on a facility, except as provided for in the subsection (1)(b) of the section, this provision shall not become effective until all providers cease using the facility.

At the earlier of 60 days from the date of abandonment without reactivating or upon completion of dismantling and removal, City approval for the facility shall automatically expire.

**20.07.290. Third-party review.** Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third-party expert may need to review the technical data submitted by a provider. The City may require a technical review as part of a permitting process. The costs of the technical review shall be borne by the provider.

The selection of the third-party expert may be by mutual agreement between the provider and the City, or at the discretion of the City, with a provision for the provider and interested parties to comment on the proposed expert and review his or her qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the providers' methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the City may require changes to the provider's application. The expert review shall address the following:

(1) The accuracy and completeness of submissions;

(2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached;  
and

(4) Any specific technical issues designated by the City.

**Sec. 3.** Chapter 20.10 DMMC, Appeals, and section 118 of Ordinance No. 1316 are hereby repealed and replaced as chapter 20.10 DMMC, Eligible facility requests and appeals, to read as follows:

### **CHAPTER 20.10**

#### **Eligible Facility Requests and Appeals**

**20.10.010. Purpose.** Congress and the Federal Communications Commission ("FCC") have, pursuant to the authority granted by 47 USC 253(c) and 47 USC 332(a), required local governments to act on wireless communication 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 time limits for review of applications for Eligible Facility Requests, small cell permits, and other approvals for service providers of telecommunication services.

#### **20.10.020. Eligible facilities request.**

(1) Application Review.

(a) Application. The City Manager shall prepare and make publicly available an application form which 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.

(b) Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the City Manager shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

(c) Time frame for review. Within sixty (60) days of the date on which an applicant submits an application seeking approval under this Chapter, the City Manager shall approve the application unless the City Manager determines that the application is not covered by this section.

(d) Tolling of the time frame for review. The sixty (60) day review period begins to run when the application is filed and may be tolled only by mutual agreement by the City Manager and the applicant or in cases where the City Manager 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.

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

(ii) The time frame for review begins running again when the applicant makes supplemental submission in response to the City Manager notice of incompleteness.

(iii) Following a supplemental submission, the City Manager will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in

the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(e) Determination that application is not an eligible facilities request. If the City Manager determines that the applicant's request does not qualify as an Eligible Facilities Request, the City Manager shall deny the application. To the extent additional information is necessary, the City Manager may request such information from the applicant to evaluate the application under other provisions of this chapter and applicable law.

(f) Failure to act. In the event the City Manager fails to approve or deny a request for 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 Manager in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(g) Remedies. Both the applicant and the City may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

**20.10.030. Collocation.** Eligible collocations other than those defined in DMMC 20.07.080 shall be processed within ninety (90) days of receipt of a complete application. The City Manager will notify the applicant within thirty (30) days of receipt of an application whether it is complete or if additional information is required. The term collocation shall not apply to the initial placement of a small cell facility on a utility pole or on any

other base station or tower that was not constructed for the sole or primary purpose of an FCC licensed antenna and their associated facilities.

**20.10.040. New wireless communication facilities.** New wireless communications facilities shall be processed within one-hundred fifty (150) days of receipt of a complete application. The City Manager will notify the applicant within thirty (30) days of receipt of an application whether it is complete or if additional information is required.

**20.10.050. An Administrative appeal of administrative decision.** A decision of the City Manager or the City Manager's designee made in accordance with this Title, including assessment of fees as provided herein, shall be considered a final administrative decision. A person aggrieved by a decision of the City Manager or designee made pursuant to this Title may appeal such decision to the Hearing Examiner in accordance with the Hearing Examiner Code, chapter 18.240 DMMC. The time and the form of such appeals is provided in chapter 18.240 DMMC, provided, however, that:

(1) The processes and procedures described in chapter 18.240 DMMC shall be expedited and adjusted, as necessary, to comply with provisions of this chapter and stated Federal law.

(2) Nothing herein shall be interpreted to provide for an appeal of a decision of the City Council to approve, deny or conditionally approve the grant of a Franchise or license to use the Public Rights-of-Way.

(3) The procedures in this chapter are not land use actions and are not subject to the provisions of RCW 36.70B.070 through 36.70B.130. See section 18.20.060 and RCW 36.70B.140(i).

**Sec. 4. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

**Sec.5. Effective date.** This Ordinance shall take effect and be in full force five (5) days after its final passage by the Des Moines City Council in accordance to law.

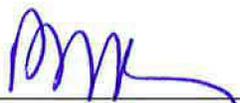
**PASSED BY** the City Council of the City of Des Moines this 12th day of July, 2018 and signed in authentication thereof this 12th day of July, 2018.

  
\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Published: July 19, 2018

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1699, Adopted July 12, 2018.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance amends the provisions of Title 20 DMMC, section 20.01.030, "Definitions," to add new definitions relating to small cell deployment and chapter 20.07 DMMC, *Antennas and Wireless Communication Facilities*, adding standards and regulations relating to small cell facilities; repeals chapter 20.10 DMMC and enacts in its place a new chapter 20.10 DMMC, *Eligible Facilities Requests and Appeals*; and fixes a time when the same shall be effective.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins, CMC  
City Clerk

Published: July 19, 2018