

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS FACILITIES; ADDING A NEW CHAPTER 18.46 TO THE OLYMPIA MUNICIPAL CODE/UNIFIED DEVELOPMENT CODE; ESTABLISHING DEVELOPMENT REGULATIONS FOR COLLOCATION, REMOVAL AND REPLACEMENT OF EXISTING ELIGIBLE WIRELESS COMMUNICATION FACILITIES TO CONFORM TO FEDERAL LAW AND REGULATIONS; ESTABLISHING AN APPLICATION SUBMITTAL AND APPROVAL PROCESS; PROVIDING FOR TERMINATION OF NON-CONFORMING STRUCTURES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the "**1996 Act**"), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Municipal Code of the City establishing local requirements for the location, construction, and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (the "**Spectrum Act**") (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter "**Section 6409**") of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the "**FCC**") to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC, pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (*In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which

focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above described proceeding (the “**Report and Order**” or “**Order**”) clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC’s review processes under the National Environmental Policy Act of 1969 (“**NEPA**”) and section 106 of the National Historic Preservation Act of 1966 (“**NHPA**”), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) by adding new Subpart CC § 1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station (“**Eligible Facility Request Rules**”); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60 shot clock and tolling provisions, establishes a deemed approved remedy for applications not timely responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Report and Order provides that the Eligible Facility Request Rules will be effective 90 days following publication in the Federal Register; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, OMC Chapter 18.44 establishes development regulations for siting new wireless transmission facilities that conform to federal and state regulations; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (RCW Chapter 43.21.C), pursuant to Washington Administrative Code Chapter

197-11, and a determination of Non-Significance (“DNS”) was issued on the ____ day of _____, 2015; and

WHEREAS, in accordance with RCW 36.70A.106 and WAC 365-196-630, a notice of intent to adopt the proposed new development regulations was sent to the State of Washington Department of Commerce and to other state agencies to allow for a 60-day review and comment period, which comment period ended prior to adoption of this ordinance; and

WHEREAS, the staff of the City’s Department of Community Planning and Development reviewed the proposed obtained input from members of the public and wireless communications company representatives, and prepared alternative draft revisions and recommended their approval; and

WHEREAS, on the ____ day of _____, 2015 the Planning Commission held a duly noticed public meeting related to the proposed interim development and zoning regulations set forth in the proposed ordinance; and

WHEREAS, the City Council the Olympia City Council received a briefing from staff, the Planning Commission and staff to prepare an ordinance based upon the record;

WHEREAS, the City Council considered the proposed development and zoning regulations on the ____ day of _____, 2015; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order bring the City’s development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. New Chapter Added (Eligible Wireless Communication Facilities Modifications) The Olympia Municipal Code is hereby amended by the addition of a new chapter to be known and referred to as Chapter 18.46, Eligible Wireless Communication Facilities Modifications, and reading as follows:

NEW CHAPTER 18.46

Eligible Wireless Communication Facilities Modifications

18.46.000 Chapter Contents

Sections:

- 18.46.010. Title
- 18.46.020. Adoption of Findings and Conclusions.
- 18.46.030. Purpose and Intent
- 18.46.040. Definitions
- 18.46.050. Applicability - Relationship to other Rules and Regulations
- 18.46.060. Application Review

18.46.010 Title. This Chapter shall be known and referred to as the “Eligible Wireless Communication Facilities Modification Code”.

18.46.020 Adoption of Findings and Conclusions. The recitals set forth in the ordinance adopting this code are adopted as findings and conclusions of the City Council.

18.46.030 Purpose and Intent.

The purpose and intent of this Chapter are to:

- A. To implement § 6409 of the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. § 1455(a)), as interpreted by the Federal Communications Commission's Acceleration of Broadband Deployment Report & Order ("FCC Eligible Existing Wireless Facilities Request Rules"), which requires the City to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station;
- B. To establish procedural requirements and substantive criteria applicable to review and approval or denial of applications for an eligible facilities modification;
- C. To exempt facilities modifications approved under this chapter as eligible facilities requests from zoning and development regulations that are inconsistent with or preempted by Section 6409 of the Spectrum Act;
- D. To preserve the City's right to continue to enforce and condition approvals under this chapter on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety;
- E. To promote timely decisions under this chapter;
- F. To ensure that decisions are made consistently and predictably;
- G. To incorporate provisions of RCW 43.21C.0384 that exempt eligible facilities modifications from review under RCW 43.21C.030(2)(c), (State Environmental Policy Act);

18.46.040 Definitions.

For the purposes of this Chapter, the terms used have the following meanings. Where the same term is also defined in OMC 18.02.180, the definitions below shall control for the application of this chapter.
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 or any equipment associated with a tower. Base Station includes, without limitation:

- a. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- 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 eligible facilities modification application is filed with the city under this chapter, supports or houses equipment described in paragraphs (a)-(b) 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.

- d. The term does not include any structure that, at the time the eligible facilities modification application is filed with the city under this chapter, does not support or house equipment described in (a)-(b) of this section.

Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible Facilities Modification. Any proposed modification of an existing eligible support structure that does not substantially change the physical dimensions of that eligible support structure which the applicant asserts is subject to review under Section 6409 of the Spectrum Act, and which involves:

- 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 chapter, provided that it is existing at the time the eligible facilities modification application is filed with the City under this chapter.

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

FCC Eligible Existing Wireless Facilities Request Rules. 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Subpart CC § 1.40001 as established pursuant to its Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, or as may be thereafter amended.

Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Spectrum Act The “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).

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 in paragraphs (a) – (d) of this section.
- g. For purposes of this section, changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. 47.

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.

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.

18.46.50 Applicability - Relationship to other Rules and Regulations.

- A. Part of Permit Application. In the event that any part of an application to the City for project permit approval includes a proposed eligible facilities modification, the proposed eligible facilities modification portion of the application shall be reviewed under the provisions of this chapter.
- B. Non-Assertion of Applicability. In the event that an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be subject to review under this Chapter and may be subject to review under Olympia Municipal Code Chapter 18.44 among other provisions of the City Code.

- C. Non-conforming Structures. This chapter shall not apply to a proposed eligible facilities modification to an eligible support structure that is not a legal conforming, or legal non-conforming, structure at the time a completed eligible facilities modification application is filed with the City. To the extent that the non-conforming structures and use provisions of the City code would operate to prohibit or condition approval of a proposed eligible facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this chapter and shall not apply.
- D. Replacement of Eligible Support Structure. This chapter shall not apply to a proposed eligible facilities modification to an eligible support structure that will involve replacement of the tower or base station. Such proposed modification will be subject to OMC 18.44.
- E. First Deployment; Base Station. This chapter shall not apply to a proposed eligible facilities modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed to the structure.
- F. SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible facilities modification application are not subject to, and are exempt from, the requirements of RCW 43.21C.030(2)(c). The authority to condition or deny an application pursuant to Chapter 43.21 RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.
- G. Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the City's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

18.46.060 Application Review

- A. Application. The department shall prepare and make publicly available an application form which shall require the information necessary for the department to consider whether an application is an Eligible Facilities Modification request.
- B. Type of Review. Upon receipt of an application for an Eligible Facilities Modification pursuant to this Chapter, the department shall review such application to determine whether the application is complete and qualifies as an Eligible Facilities Modification application.
- C. Timeframe for Review. Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, less any time period that may be excluded under (d) of this section, the director shall approve the application unless the director determines that the application is not covered by this Chapter.
- D. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed with the department, and may be tolled only by mutual agreement by the department and the applicant, or in cases where the director determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
 - a. To toll the timeframe for incompleteness, the director must provide written notice to the applicant within 20 days of receipt of the application, specifically delineating all missing documents or information required in the application.
 - b. The timeframe for review begins running again when the City receives the applicant's supplemental submission in response to the director's notice of incompleteness.

- c. Following a supplemental submission, the director will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (d) of this section. Except as may be otherwise agreed by the applicant and the director, second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- E. Failure to Act. In the event the department fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

Section 2. Amendment of OMC 18.44.040. Section 18.44.040 of Olympia Municipal Code is hereby amended as follows:

18.44.040 Applicability - Types of Facilities and Actions

Except as provided in Section 18.44.060 (Exempt Installations) and Chapter 18.46 (Eligible Wireless Communication Facilities Modifications), this chapter shall apply to the development activities including installation, construction, or modification of the following antennas and wireless communications facilities:

- A. Existing antenna support structures.
- B. Proposed antenna support structures.
- C. Public antenna support structures.
- D. Replacement of existing antenna support structures.
- E. Collocation on existing antenna support structures.
- F. Attached wireless communications facilities.
- G. Concealed wireless communications facilities.
- H. AM/FM/TV/HDTV broadcasting transmission facilities.
- I. Satellite earth stations that are over one meter (39.37 inches) in diameter in all residential districts and over two meters (78.74 inches) in all other zoning districts.

Section 3. Amendment of OMC 18.44.090. Section 18.44.090 of Olympia Municipal Code is hereby amended as follows:

18.44.090 Permitted Wireless Communication Facilities by Zoning District

- A. Generally: Table 44.01, Permitted Wireless Communication Facilities by Zoning District, identifies types of Wireless Communication Facilities which are permitted outright (P), subject to a Conditional Use Permit (C), or prohibited (N). Notwithstanding the provisions of Table 44.01, any Eligible Wireless Facilities Modification subject to Chapter 18.46 is permitted outright.

B. Historic districts and properties: Table 44.01 also identifies types of Wireless Communications Facilities permitted outright (P), subject to a Conditional Use Permit (C), or prohibited (N) in National Historic Districts, or on local, state, or Federal historic register properties, depending on the Zoning District Group (as defined within Table 44.01) wherein the site is located.

Zoning District Group	Antenna Element Replacement	CONCEALED				NON-CONCEALED			
		Attached WCF	Freestanding WCF	Collocated or Combined on Existing WCF	ROW Attached Structure - 34.5 kV+	Mitigation of Existing WCF	Expanding Existing Antenna Array	Attached WCF	Freestanding WCF
Group 1. INDUSTRIAL ZONES (I, LI)	P	P	P	P	P	P	P	P	P
Group 2. COMMERCIAL ZONES (AS, CSH, DB, GC, HDC-3, HDC-4, MS, UC, UW)	P	P	P	P	P	P	P	C	N
Group 3. MIXED USE ZONES (PUD, PO/RM, RMU, UR, UW-H)	P	P	C	P	P	C	C	N	N
Group 4. NEIGHBORHOOD ZONES (COSC, HDC-1, HDC-2, MHP, MR 7-13, MR 10-18, NC, NR, NV, R1/5, R4, R4-8, R6-12, RL1, RM-18, RM24, RMH, UV)	P	C	C	C	C	C	C	N	N
NATIONAL HISTORIC DISTRICTS and LOCAL, STATE, OR FEDERAL REGISTER PROPERTIES Groups 1-3	P	C	C	C	C	C	C	N	N
Group 4	P	N	N	N	N	N	N	N	N
SITES WITHIN 300 FEET OF GROUP 4 - NEIGHBORHOOD ZONES Groups 1-3	P	C	C	C	C	C	C	N	N

P – Permitted

C - Conditional Use Permit

N- Not Permitted

* Notwithstanding the provisions of Table 44.01, any Eligible Wireless Facilities Modification subject to Chapter 18.46 is permitted outright.

Section 4. Section 18.44.110 of Olympia Municipal Code is hereby amended as follows:**18.44.110 Approval Process**

All approvals are subject to the review processes outlined in Title 18 OMC, Unified Development Code. Additionally, in accordance with Table 44.01 in Section 18.44.090 Permitted Wireless Communications Facilities by Zoning District, the following approval process shall apply:

- A. New WCFs and Antenna Element Replacements Not Subject to Chapter 18.46 (Eligible Wireless Communication Facilities Modifications).
 1. Any application submitted pursuant to this section shall be reviewed by City staff for completeness. If any required item fails to be submitted, the application shall be deemed incomplete. Staff shall advise an applicant in writing within twenty (20) business days after submittal of an application regarding the completeness of the application. If the application is incomplete, such notice shall set forth the missing items or deficiencies in the application, which the applicant must correct and/or submit in order for the application to be deemed complete.
 2. Within twenty (20) days of receiving a timely response from an interested potential co-applicant, the applicant shall inform the respondent and the City in writing as to whether or not the potential collocation or combining is acceptable and under what conditions. If the collocation or combining is not acceptable, then the applicant must provide the respondent and the City written justification as to why the collocation or combining is not feasible.
- B. Supplemental Review. The City reserves the right to require a supplemental review for any type of WCF, subject to the following:
 1. Due to the complexity of the methodology or analysis required to review an application for a wireless communication facility, the City will require a technical review by a third party expert approved by the City, the costs of which shall be borne by the applicant and be in addition to other applicable fees.
 2. The applicant shall submit the required fee as published in the City's current fee schedule.
 3. Based on the results of the expert review, the approving authority may require changes to the applicant's application or submittals.
 4. The supplemental review may address any or all of the following:
 - a. The accuracy and completeness of the application and accompanying documentation.
 - b. The applicability of analysis techniques and methodologies.
 - c. The validity of conclusions reached.
 - d. Whether the proposed wireless communications facility complies with the applicable approval criteria set forth in this Chapter.
 - e. Other items deemed by the City to be relevant to determining whether a proposed wireless communications facility complies with the provisions of the Olympia Municipal Code.

C. Post Construction Field Testing. Within thirty days of becoming fully operational, all facilities shall be field tested by a third party reviewer, at the applicant's expense, to confirm the theoretical computations of RF emissions.

Section 5. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 6. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 7. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: