

Chapter 14.30 WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

14.30.010 Purpose.

The purpose of this chapter is to establish a process for uniform standards for reviewing and acting upon requests for the placement of wireless facilities within the public rights-of-way of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the role of personal wireless facilities to provide personal wireless service to the residents and businesses within the City. No provision of this chapter shall be interpreted in a manner that violates state or federal law.

14.30.020 Definitions.

A. The abbreviations, phrases, terms, and words used in this chapter will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms, or words in this policy will have their ordinary meanings.

B. The definitions in this chapter shall control over conflicting definitions for the same or similar abbreviations, phrases, terms, or words as may be defined elsewhere in the Municipal Code.

C. Definitions.

1. "Applicant" means a person filing an application for placement or modification of a wireless facility in the public right-of-way.

2. "Application" means a formal request, including all required and requested documentation and information, submitted by an applicant to the city for a wireless ROW permit.

3. "City Manager" means the City Manager or their designee.

4. "Director" means the Director of the Department of Public Works or their designee.

5. "Eligible facilities request" has the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

6. "FCC" means the Federal Communications Commission or its lawful successor.

7. “Permittee” means any person or entity granted a wireless ROW permit pursuant to this chapter.

8. “Personal wireless services” has the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

9. “Public right-of-way,” “right-of-way,” or “ROW” means any public street, public way, or public place within the City limits, either owned by the City, dedicated to the City or granted by easement to the public for the purpose of travel, and which the City has the responsibility to maintain or manage. “Public right-of-way,” “right-of-way,” or “ROW” includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

10. “Support structure” means any structure capable of supporting a base station.

11. “Wireless facility” or “facility” means the transmitters, antenna structures, and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s) used to provide personal wireless services.

12. “Wireless regulations” means regulations adopted pursuant to Section 14.30.040 and implementing the provisions of this chapter.

13. “Wireless ROW permit” means a permit issued pursuant to this chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the right-of-way.

14.30.030 Applicability.

A. Permit Required. Unless exempted, every person who seeks to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless ROW permit authorizing the placement or modification of the facility in accordance with this chapter.

B. Exemptions. This chapter does not apply to any of the following:

1. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.

2. The use of a mobile wireless facility to provide temporarily for wireless services in the event of an emergency, for no longer than the duration of interruption in

services due to the emergency. This exception does not authorize the excavation, movement, or removal of existing functional facilities.

3. Wireless communications facilities permitted under Chapter 19.136.

C. Other Legal Requirements. In addition to the requirements of this chapter, an applicant seeking to place wireless facilities in the right-of-way shall comply with other applicable local, state, and federal laws and regulations, including but not limited to applicable FCC regulations governing radio frequency emissions, the Americans with Disabilities Act, and all applicable building standards. A valid wireless ROW permit issued pursuant to the requirements of this chapter and the wireless regulations shall be deemed to satisfy the requirements of Municipal Code Chapter 14.08.

D. Existing Wireless Facilities. Any permitted wireless facility already existing in the right-of-way as of the date of this chapter's adoption shall remain subject to the standards and conditions of the Municipal Code in effect prior to effective date of this chapter, unless and until a renewal of such facility's then-existing permit is granted, at which time the provisions of this chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this chapter.

E. Public Use. Except as otherwise provided by state or federal law, any use of the public right-of-way authorized pursuant to this chapter will be subordinate to the City's use and use by the public.

14.30.040 Wireless Standards and Regulations.

A. Adoption and Amendment Regulations. The Director shall develop wireless standards regulations to implement the requirements of this chapter including regulations governing eligible facility requests. The City Council shall approve the adoption of the wireless regulations and shall approve any amendments to the wireless regulations, except for minor modifications as set forth in Paragraph B. Applicants shall engineer, design, and locate the wireless facilities in accordance with the standards and wireless regulations adopted by the City Council.

B. Minor Modifications. The Director may approve any modification of the wireless regulations to the extent that such modification does not have the potential to substantially enlarge or expand the scope of use of the right-of-way for the provision of personal wireless service, the potential to interfere with the use or management of the right-of-way, or the potential to substantially impair public health, safety, and welfare

("minor modification"). The Director shall notify the City Council of a proposed minor modification of the wireless regulations at least 10 business days before the modification takes effect. Prior to the effective date of a proposed minor modification, any Councilmember may request that Council review the minor modification before it takes effect. A request for review shall stay the implementation of the minor modification until the City Council completes its review. The City Council may in its discretion approve, modify, or reject the proposed minor modification.

14.30.050 Applications.

A. Application Procedures. The Director shall develop forms and procedures for submission of applications for placement or modification of wireless facilities and proposed changes to any support structure consistent with this chapter.

B. Content of Application.

1. An applicant shall submit an application on the form approved by the Director, which may be updated from time to time, but in any event shall require the submission of all required fees, documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law and the Municipal Code and will not endanger the public health, safety, or welfare.

2. An application for an eligible facility request shall be made in a form approved by the Director and shall contain information sufficient to determine whether the proposed facility complies with the requirements of 46 C.F.R. § 1.6100. An application for an eligible facilities request shall be subject to the requirements of this chapter and the wireless regulations to the extent expressly stated in this chapter or the regulation.

D. Public Notice. At least 21 days prior to when an application may be approved, the applicant shall: (1) post notice at the proposed project site in a location near to and visible from the right-of-way; (2) notify in writing, in a form approved by the Director, of the filing of the application to property owners and residents of all property within a 300-foot radius of the proposed project; and (3) provide the City with evidence that notice has been provided pursuant to Subparagraphs (1) and (2). The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least one hundred 180 calendar days. The posted notice shall be at minimum 8.5 inches wide by 11 inches tall. The posted notice

shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians, or other users in the right-of-way.

E. Fees. Application fees shall be set by resolution of the City Council and shall be required to be submitted with any application for a wireless ROW permit.

F. Review of Applications. Upon receipt of any fee established by this chapter, the Director shall review an application for the placement or modification of a wireless facility and shall issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued. If an application is incomplete, the Director may notify the applicant in writing, specifying the material omitted from the application. The Director may in their discretion deem any incomplete application withdrawn after 60 days.

14.30.060 Decisions of the Director.

A. Authority of Director. Subject to the rights of appeal provided herein, the Director shall determine whether to approve, approve subject to conditions, or deny an application. The Director may take such other steps as may be required to timely act upon applications for placement or modification of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Findings. Except for eligible facilities requests, the Director shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, they find each of the following:

1. The application is complete and provides all information required by this chapter and the wireless regulations.
2. The facility meets all applicable local, state, and federal health and safety standards, including federal standards for radiofrequency emissions.
3. The facility complies with this chapter and all applicable wireless standards and regulations.

The Director's decision to approve, deny, or conditionally approve an application shall be in writing and include the reasons for the decision.

C. Eligible Facilities Requests. For eligible facilities requests, the Director shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, they find that the application meets the requirements set forth

in 47 C.F.R. § 1.6100 and the proposed facility complies with all applicable state and federal laws and regulations. The conditions of any permit previously issued for the eligible facility shall apply to the maximum extent permitted by federal and state law and regulations.

D. Conditions of Approval. All permits issued under this chapter shall include conditions of approval sufficient to ensure compliance with the requirements of this chapter and the wireless regulations, as may be set forth in the wireless regulations.

E. Independent Consultants. The Director may in their discretion select and retain independent consultant(s) with expertise and appropriate credentials in telecommunications, building or structural standards, and/or electrical or fire safety in connection with the review of any application under this chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including but not limited to application completeness or accuracy, engineering analysis, or compliance with FCC radio frequency emissions limits. Nothing in this paragraph authorizes the City to evaluate the health effects of a proposed wireless facility, except to determine that the facility complies with radio frequency emissions limits established by the FCC.

F. Waivers. Requests for waivers from any requirement of this chapter or the wireless regulations shall be made in writing to the Director. The Director may grant a request for waiver only if (1) the applicant demonstrates that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable state or federal laws or regulations, or (2) with respect to a standard or requirement set forth in the wireless regulations, the Director determines based on clear and convincing evidence that a waiver of the standard or requirement is necessary to protect public health, safety, or welfare, based on specific characteristics of the proposed facility. All waivers approved pursuant to this Paragraph shall be granted only on a case-by-case basis and shall be narrowly tailored so that the requirements of this chapter are waived only to the extent necessary to comply with state or federal law or regulations or to protect public health, safety, or welfare.

G. Notice to Interested Persons. The Director shall establish a procedure to allow any interested person who receives notice pursuant to Section 14.30.050(D) to be notified of any decision made pursuant to this Section.

14.30.070 Appeals.

A. Right to Appeal; Appeal Fee. Any person entitled to receive notice pursuant to Section 14.30.050(D) may request an administrative hearing to appeal the director's decision. In order to request a hearing, the affected person shall submit to the City Clerk an administrative hearing form along with the full amount of any appeal fee. The request for administrative hearing shall be incomplete if it does not include the deposit in the full amount of any appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. Any appeal fee shall be refunded to the appellant if their appeal is granted. The administrative hearing form shall include the location or address of the proposed wireless facility that is subject of the appeal, as well as the grounds for which the appeal is being submitted.

B. Time to Appeal. Appeals must be filed within five business days of the mailing of decision notice of the Director unless a different time period is specified by the Director in the notice. The Director may extend the time period for filing an appeal for good cause; provided, however, an extension may not be granted where such extension would result in approval of the application by operation of law. If a timely and complete request for a hearing is not submitted, the Director's decision shall be deemed final.

C. Administrative Hearing. If a timely and complete request for hearing is submitted, the City Manager shall conduct an administrative hearing within 30 days of receipt of the appeal or as soon thereafter as necessary to comply with applicable requirements of state and federal law. The City Manager may decide all issues presented de novo. The appellant and the applicant shall have the opportunity to present evidence; provided, however, that rules of evidence and discovery do not apply to the administrative hearings.

D. Decision on Appeal. The City Manager may affirm, reverse, or modify the Director's decision and may modify conditions of approval to ensure that the decision complies with the requirements of this chapter and applicable local, state, and federal law. The City Manager's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant and upon the appellant (if different) by first class mail to the address stated on the request for hearing form. The written decision of the City Manager shall be the final decision of the City effective on the date of mailing.

14.30.080 Revocation of Permits; Removal of Equipment; Enforcement.

A. Revocation of Permit. A wireless ROW permit may be revoked (1) for failure to comply with the conditions of the permit, any provision of the Municipal Code, or

applicable state or federal law; (2) if the permittee becomes ineligible for franchise rights under state law; or (3) if the permittee's FCC authorization to operate wireless facilities and/or provide wireless service is terminated for any reason. The Director shall provide the permittee notice and the opportunity to be heard prior to the revocation of any permit, the procedures for which may be set forth more fully in the wireless regulations.

B. Removal of Wireless Facilities. The Director may order the removal of any wireless facility upon revocation or termination of its wireless ROW permit and of any wireless facility installed or modified after the effective date of the ordinance codified in this chapter without a validly issued wireless ROW permit; provided, however that removal of a support structure owned by the City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All entities that own or control any part of a wireless facility shall be jointly and severally liable for any costs incurred by the City in connection with enforcement of this provision and the removal of the facility.

C. Administrative Penalties. In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of this chapter, the Director may issue an administrative citation under Chapter 1.10 for the violation of any provision of this chapter or any regulation adopted pursuant to Section 14.30.040.

14.30.090 Nondiscrimination.

In establishing the rights, obligations, and conditions set forth in this chapter, it is the intent of the city to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the right-of-way.