

CHAPTER 22.62
WIRELESS COMMUNICATION FACILITIES

Sections:

22.62.010	Purpose.
22.62.020	Applicability.
22.62.030	General Provisions.
22.62.040	Additional Standards for Small Wireless Facilities.
22.62.050	Additional Standards for Large Wireless Facilities.
22.62.060	Eligible Facilities Requests.
22.62.070	Review Process.
22.62.080	Obsolescence or Abandonment.
22.62.090	Deviations.

22.62.010 Purpose.

In order to implement the purposes and policy set forth in the city's comprehensive plan, this chapter provides design and review procedures for wireless communication facilities. These provisions are intended to provide standards to assist in minimizing the visually obtrusive impacts which can be associated with WCFs and to encourage creative approaches in their location and construction. Congress and the Federal Communications Commission ("FCC") have, pursuant to the authority granted by 47 USC Section 253(c) and 47 USC Section 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. Accordingly, the city adopts the following time limits for review of applications for eligible facility requests, and other approvals for service providers of telecommunication services.

22.62.020 Applicability.

A. Applicable Development. The regulations, requirements, and standards contained in MMC Chapter 22.62, Wireless Communication Facilities, shall apply to:

1. New large wireless communication facilities;
2. New small wireless communication facilities; and
3. Modifications to and/or collocation with existing wireless communication facilities.

B. Exemptions. The following are exempt from the provisions of this chapter and shall be permitted in all zoning districts:

1. Routine maintenance, replacement, or repair of wireless communication facilities or related equipment, excluding structural work or changes in height, type, or dimensions of towers or base stations; provided, that compliance with the standards of this chapter are maintained;
2. Emergency repair or maintenance of a wireless communication facility, provided a building permit application need not be filed for the emergency repair or maintenance of a wireless communication facility until thirty days after the completion of such emergency activity;
3. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC;
4. Antennas and related equipment that are being stored, shipped, or displayed for sale;
5. Radar systems for military and civilian communication and navigation;
6. Nonpermanent, temporary wireless communication facilities subject to the requirements of a temporary use permit pursuant to MMC Chapter 22.60, Temporary Uses;
7. Licensed amateur (ham) radio stations; and
8. Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when operated as a secondary or accessory use of a property.
9. Proposals made under the provisions of MMC 22.62.060, Eligible Facilities Requests, that are determined to constitute an eligible facilities request, as that term is used and defined in 47 CFR § 1.6100.

C. Prohibitions. The following wireless communication support structures are prohibited in all zoning districts within the city:

1. Lattice towers
2. Guyed wire towers

22.62.030 General Provisions.

Wireless communication facilities are permitted subject to this chapter and shall meet all applicable standards contained herein as well as the following:

A. Land Use.

1. Wireless communication facilities are permitted in all zones.
2. Wireless communication facilities shall not be allowed on buildings which are designated as solely residential in use, except for those structures that contain three or more attached dwelling units.

B. Setbacks. When located outside of rights-of-way, WCFs reviewed under this section shall not be located within any required setback areas; provided, however, the setback requirement for underground facilities shall be a minimum of five feet from any property line, except where:

1. Large WCFs that exceed forty-five feet in height shall be set back from any lot line five feet more than that specified in the individual zone for every ten feet, or fraction thereof, over forty-five feet of height.
2. The required setback, as listed above, may be reduced by the zoning administrator if the applicant can demonstrate to the zoning administrator's satisfaction that the reduced setback would result in a greater natural vegetative screening of the WCF than would have been provided by meeting the WCF development regulations.

C. Airport Compatibility. Wireless communication facilities are subject to the applicable provisions of MMC Chapter 22.54, Airport Compatibility, to ensure that the facilities are not located within the airport's restricted airspace.

D. Landscaping. WCF support structures, towers, and base stations shall be screened using a Type I Planting buffer with a minimum width of five feet around the compound's perimeter, in accordance with the requirements contained in MMC 22.46.040(A), Type I Planting – Solid Screen. Trees with significant height and fullness upon maturity shall also be used to visually screen the tower from adjacent properties.

E. Lighting. Except as specifically requested by the Federal Aviation Administration (FAA), and/or the Federal Communication Commission (FCC), WCFs shall not be illuminated, except equipment shelters and compounds may use lighting for security reasons as long as the light is shielded downward to remain within the boundaries of the site.

F. Concealment Technology. All WCFs shall employ concealment technology in their design, construction, and maintenance and reduce the WCFs' aesthetic impacts to the maximum extent possible. Such concealment technology shall include, at a minimum, the following:

1. All WCFs and antennas shall be painted a nonreflective color, approved by the zoning administrator, which blends into the nearby surroundings of the WCF so as to minimize the visual impact of the support structure or antennas.
2. New WCFs shall be located in such a manner that, to the extent feasible, existing trees and/or buildings and other structures on the site are used to screen the WCF from view from roadways, residences, and other properties; provided, however, that all WCFs shall be designed in a manner which minimizes the need for removal of existing trees.
3. To the maximum extent possible, WCFs shall be designed to resemble an object other than a WCF which is already present in the local environment, such as a tree, a streetlight or a traffic signal, to the maximum extent feasible.
4. Concealment under this subsection may include the use of colors or materials to blend into the building materials from which a structure is constructed. Examples of concealment technology include, but are not limited to, the use of innovative site design techniques, existing or new vegetation and landscaping, paint and other surface treatments, alternative antenna configuration and/or selection, utilization of antenna support structures designed to resemble trees, and any

other practice which screens the WCF from observation from roadways, residences, and other properties or otherwise has the effect of reducing the aesthetic impacts associated with the WCF.

G. Noise. No equipment shall be operated at a WCF so as to produce noise in excess of the applicable noise standards regulated by MMC 6.04.055, Public Nuisances, and Chapter 173-60 WAC, Maximum Environmental Noise Levels, except for in emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis. Air conditioning and ventilation equipment associated with the ancillary equipment of the WCF shall be designed and configured in a manner so that noise impacts on adjacent properties with residential uses are minimized to the maximum extent practicable through the use of baffling and/or other noise attenuation techniques and that the noise levels generated by the ancillary equipment otherwise comply with applicable noise regulations adopted by the city. In descending order, preference shall be given to the following configurations of air conditioning and ventilation equipment: (a) orientation toward properties with nonresidential uses; (b) orientation toward streets; and (c) orientation toward the furthest residential use.

H. Maintenance. All WCFs shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.

I. Radio Frequency Emissions. All applicants shall demonstrate compliance with all applicable FCC regulations regarding the radio-frequency emissions of WCFs. If at any time radio-frequency emissions exceed any of the standards established by the FCC, the applicant shall immediately discontinue use of the WCF and notify the city. Use of the WCF may not resume until the applicant demonstrates that corrections have been completed which reduce the radio-frequency emissions to levels permitted by the FCC.

J. Use of City Right-of-Way. Any wireless communication carrier who desires to construct, install, operate, maintain, or otherwise locate WCFs in, under, over, or across any public right-of-way of the city for the purpose of providing wireless services shall obtain permission from the city, and enter into a right-of-way agreement and/or obtain applicable permits authorizing use of the city right-of-way. If a new pole is permitted by the city for a wireless communications facility, the applicant must dedicate the new pole to the city.

K. Visual Impact. Antennas, equipment enclosures, and ancillary equipment, conduits and cables shall not dominate the structure or pole upon which they are attached.

L. Applications for wireless facilities are subject to all applicable regulations within this Title.

M. Collocation. It is the policy of the city to minimize the number of WCFs and to encourage the collocation of more than one carrier's WCFs on a single support structure. A proposed WCF shall collocate with an existing WCF site unless the applicant can demonstrate to the city's satisfaction that such collocation is not feasible due to radio interference, usable signal, other engineering reason, property owner's refusal to lease property, or zoning restriction. The city also encourages WCF applicants to construct and site facilities with a view toward sharing sites and structures with other utilities, and accommodating the future collocation of other future WCFs. Nothing in this section shall prohibit the owner of an existing facility from charging a reasonable fee for collocation of other communication facilities.

N. Equipment Shelters and Cabinets.

1. An equipment shelter for a WCF shall be the minimum size necessary for its intended purpose.
2. Where multiple WCFs are proposed to be located in close proximity, WCF equipment may be required to be consolidated in one WCF equipment housing structure.
3. Ground-mounted equipment in the right-of-way is prohibited, unless such facilities are placed underground, or the applicant can demonstrate that pole-mounted equipment and undergrounding are technically infeasible.
4. Generators located in the right-of-way are prohibited.
5. All equipment shelters, cabinets, or other on-the-ground ancillary equipment shall meet the setback requirements of the zone in which it is located.
6. Equipment shelters and cabinets and other on-the-ground ancillary equipment shall be screened using a Type I Planting buffer with a minimum width of five feet around the enclosure, in

accordance with the requirements contained in MMC 22.46.040(A), Type I Planting – Solid Screen.

22.62.040 Additional Standards for Small Wireless Facilities.

A. Small Wireless Facilities. Small wireless facilities, as consistent with 47 CFR § 1.1312(e)(2), are defined as those facilities that meet each of the following conditions:

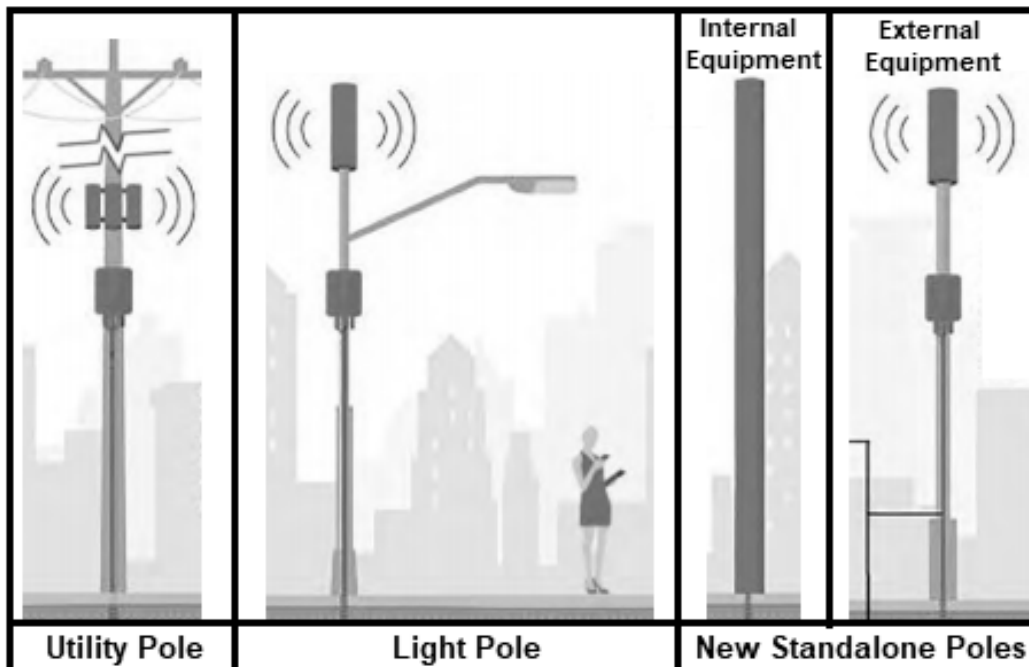
1. The facilities:
 - a. Are mounted on structures 50 feet or less in height including their antennas, as defined in 47 CFR § 1.1320(d); or
 - b. Are mounted on structures no more than 10 percent taller than adjacent structures; or
 - c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of “antenna” in 47 CFR § 1.1320(d)), is no more than three cubic feet in volume; and
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
4. The facilities do not require antenna structure registration under 47 CFR Part 17; and
5. The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

B. General Provisions.

1. Siting of Small Wireless Facilities. Small wireless facilities are permitted both within and outside of the right-of-way in all zones, provided they meet the requirements of this chapter and have been issued all applicable permits. Small wireless facilities include the following:

- a. New small facilities attached to existing, new, or replacement utility poles;
- b. New small facilities attached to existing, new, or replacement light poles;
- c. New standalone poles with external equipment;
- d. New standalone poles with internal equipment;
- e. New small facilities attached to existing buildings; and
- f. Modifications to and/or collocations on existing small wireless facilities.

Figure 22.62.040: Poles Permitted as Support Structures for Small Wireless Facilities



2. Signage and Identification. No signage, message, or identification other than the manufacturer's identification 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 techniques where appropriate.
3. Lighting. Antennas and related equipment shall not be illuminated except as required by a federal or state authority, or unless approved as part of a light standard.
4. Visual Impact. The preferred location of a small wireless facility on a pole is the location with the least visible impact.
5. Encroachment. Small wireless facilities may not encroach onto or over private property or property outside of the right-of-way without the property owner's express written consent.
6. Cumulative Effects. The city may consider the cumulative visual effects of small wireless facilities mounted on poles within the right-of-way in determining whether additional permits may be granted so as to not adversely affect the visual character of the city.

C. Small Wireless Facilities Attached to Pole Facilities. Any small wireless facility attached to a pole, as described in MMC 22.62.050(A)(1)(a-d), shall conform to the following requirements:

1. New small wireless facilities shall not exceed the maximum height of the zoning district in which it is located or fifty feet, whichever is greater.
2. An existing pole at the proposed location of the small wireless facility may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that is a maximum of 10 feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner, and such height extension is the minimum extension necessary to provide sufficient separation and/or clearance from electrical and wireline facilities.
3. A "pole extender," which is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole, may be used instead of replacing an existing utility or light pole, pursuant to the following conditions:
 - a. A pole extender shall not increase the height of the existing pole by more than 10 feet, unless a further height increase is required and confirmed in writing by the pole owner.
 - b. Such height extension proposed is the minimum extension necessary to provide sufficient separation and/or clearance from electrical and wireline facilities.
 - c. The pole extender shall be painted to approximately match the color of the pole.
 - d. The pole extender shall substantially match the diameter of the pole measured at the top of the pole.
4. 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 pole on which they are attached.
5. Panel antennas shall not exceed three cubic feet in volume and shall not be mounted more than 12 inches from the surface of the pole unless additional distance is required by the pole owner.
6. A canister antenna may be mounted on top of an existing or replacement pole, which must not exceed the height requirements described in subsection (C)(1) of this section. A canister antenna mounted on the top of a pole shall not exceed the diameter of the pole by more than 12 inches or be more than a total of 16 inches in diameter, whichever is greater, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side-mounted canister antenna, so long as the inside edge of the antenna is no more than 12 inches from the surface of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole.
7. An omni-directional antenna may be mounted on the top of an existing or replacement pole, which may not exceed the height requirements described in subsection (C)(1) of this section, provided such antenna is no more than three cubic feet in volume 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.

8. The visual effect of the small wireless facility on all other aspects of the appearance of the pole shall be minimized to the greatest extent possible.
 9. The use of a utility or light pole for the siting of a small wireless facility shall be considered secondary to the primary function of the utility or light pole. If the primary function of the utility or light pole serving as the host site for a small wireless facility becomes unnecessary, the utility or light pole shall not be retained for the sole purpose of accommodating the small wireless facility, and the small wireless facility and all associated equipment shall be removed at the applicant's expense.
 10. All cables and conduit 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 conduits shall be minimized to the number technically necessary to accommodate the small wireless facility.
 11. The diameter of a replacement pole shall comply with the city's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25 percent increase of the existing pole measured at the base of the pole. Glulam poles are specifically prohibited.
 12. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), city construction and sidewalk clearance standards, and city, state, and federal laws and regulations in order to provide a clear and safe passage within the right-of-way. Further, the location of any replacement or new pole must be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect public health, safety, or welfare.
 13. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.
 14. Any replacement pole shall substantially conform to the design of the pole it is replacing.
 15. Small wireless facilities shall not be placed on traffic signal poles.
 16. Side arm mounts for antennas or equipment must be the minimum extension necessary, but in any case no more than 12 inches off of the pole.
 17. Upon replacement of a pole upon which a small wireless facility exists, the small wireless facility owner must transfer its infrastructure to such new pole within 90 days of notice from the pole owner to transfer the small wireless facility, or such extended period of time as approved by the pole owner.
 18. Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use or that is located in a residential zone.
 19. All related equipment, including, but not limited to, ancillary equipment, radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which is mounted on poles shall not be mounted more than six inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner.
 20. Equipment for small wireless facilities must be attached to the pole unless otherwise permitted to be ground-mounted by the zoning administrator. The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any preexisting associated equipment on the pole, may not exceed 28 cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design; provided, that said multiple enclosures must not cumulatively exceed 28 cubic feet.
- D. Small Wireless Facilities Attached to Buildings. Small wireless facilities attached to existing buildings, as described in MMC 22.62.040(B)(1)(e), shall conform to the following requirements:
1. Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural character.
 2. The interruption of architectural lines or horizontal or vertical reveals is discouraged.
 3. New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if they complement the architecture of the existing building.
 4. Small wireless facilities shall utilize the smallest mounting brackets necessary, in order to provide the smallest offset from the building.

5. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
6. Small wireless facilities shall be painted and textured to match the adjacent building surfaces.
7. The applicant must provide approval from the building owner, including consent that the small wireless design meets the building owner's design requirements.

22.62.050 Additional Standards for Large Wireless Facilities.

- A. Large Wireless Facilities. Large wireless facilities ("macrofacilities") are defined as any wireless communications facility that is not a small wireless facility and provides radio frequency coverage for a cellular telephone network. Generally, large wireless antennas are mounted on ground-based towers, rooftops, and other existing structures at a height that provides a clear view over the surrounding buildings and terrain. Large wireless facilities typically contain antennas that cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers.
- B. General Provisions.
1. Siting of Large Wireless Facilities. Large wireless facilities are permitted both within and outside of the right-of-way in all zones, provided they meet the requirements of this chapter and have been issued all applicable permits. Large wireless facilities include the following:
 - a. New freestanding large wireless facilities;
 - b. New large wireless facilities attached to existing buildings;
 - c. Modifications to and/or collocations with existing large wireless facilities that do not qualify as an eligible facilities request, as that term is used and defined in 47 CFR § 1.6100 (see MMC 22.62.060).
 2. Height. In the open space [limited open space (LS) and parks (P)], single-family residential (R4, R7, and R15), multifamily residential (R25), and mixed use [mixed use – general (MG), mixed use – medical (MM), and mixed use – neighborhood (MN)] zoning districts, the maximum combined height limit shall be sixty feet. In commercial [downtown commercial (DC), general commercial (GC), industrial transition (IT), tourist commercial (TC), and the North Kelsey/Tjerne Place overlay (NK/TP-O)], industrial [general industrial (GI), light industrial (LI), shoreline industrial (SI), and the Fryelands Commercial overlay (FC-O)], and public facilities [institutional (IN) and transportation (TR)] zoning districts and overlays, the combined height of the WCF and any support structure shall not exceed eighty-five feet, except when collocation is specifically provided for, the combined height shall not exceed one hundred feet. Utility poles and streetlights may be exempted under MMC 22.62.090 from the height limitation at the discretion of the zoning administrator and public works director.
 3. Separation Distance. In all residential and commercial districts, large WCFs shall be separated by a distance equal to or greater than one thousand three hundred twenty linear feet (one-quarter mile), except when the applicant demonstrates that collocation upon the nearby WCF is not feasible pursuant to MMC 22.62.030(M). WCFs that are co-located upon a single support structure shall count as a single WCF for the purposes of this subsection.
- C. Freestanding Large Wireless Facilities. Large wireless facilities attached to freestanding support structures, as described in MMC 22.62.050(B)(1)(a), shall conform to the following requirements:
1. All freestanding support structures, including monopoles and towers, that exceed 85 feet in height shall be designed to accommodate two or more wireless communications facilities.
 2. Antennas not exceeding 15 feet in height which extend above the freestanding support structure shall not be calculated as part of the height of the wireless communications support structure.
 3. Freestanding support structures, antennas, and antenna arrays, together with any associated antenna mount, shall be designed utilizing the narrowest dimensions possible, and in no instance shall they extend further, as measured horizontally, from the centerline of the monopole than a distance of 15 feet.
 4. Collocation on an existing freestanding support structure shall be encouraged.

5. The equipment shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment or cabinet to the freestanding support structure shall be concealed, camouflaged, or placed underground.

D. Attached Large Wireless Facilities. Large wireless facilities attached to existing buildings, as described in MMC 22.62.050(B)(1)(b), shall conform to the following requirements:

1. Attached antennas may exceed the height limitation by 15 feet so long as they are affixed to the side of an existing building or mounted on the rooftop of the building and architecturally blend with the building.
2. Buildings that are nonconforming with respect to height may be used, provided the antenna's do not exceed a height of 15 feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
3. Attached wireless facilities shall be placed in a location, which is as unobtrusive as possible consistent with the proper functioning of the WCF.
4. The interruption of architectural lines or horizontal or vertical reveals is discouraged.
5. New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if they complement the architecture of the existing building.
6. Wireless facilities shall utilize the smallest mounting brackets necessary, in order to provide the smallest offset from the building.
7. 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.
8. The applicant must provide approval from the building owner, including consent that the wireless design meets the building owner's design requirements.
9. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened.

22.62.060 Eligible Facilities Requests.

A. Eligible Facilities Requests. An eligible facilities request is defined by 47 CFR § 1.40001(b)(3) as 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 collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment. The Federal Communications Commission (FCC) has determined a modification to a wireless communications facility to constitute a substantial change to the physical dimensions of an eligible support structure if it meets any of the following criteria:

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% 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. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;
2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 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;
3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no 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;

4. It entails any excavation or deployment outside the current site;
5. It would defeat the concealment elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

B. Eligible facilities requests shall be reviewed pursuant to MMC 22.62.070(D).

22.62.070 Review Process.

A. General Provisions.

1. Permits and Approvals Required.

a. Wireless Communication Facility Permit. A wireless communication facility permit is required for any wireless communication facility unless specifically exempted.

b. Building Permit. A building permit is required for any wireless communication facility unless specifically exempted.

c. Right-of-Way Disturbance Permit. A right-of-way disturbance permit is required for any wireless communication facility located within public rights-of-way unless specifically exempted.

d. Grant of Franchise Agreement. A grant of a franchise agreement from the City is required for all small wireless communication facilities and networks located within public rights-of-way unless specifically exempted.

B. Wireless Communication Facility Permit.

1. Preapplication Meeting. A preapplication meeting is encouraged prior to submitting an application for a wireless communication facility. The purpose of a preapplication meeting is to discuss the nature of the proposed deployment of telecommunications facilities, and to review applicable plans, policies, and regulations.

2. Application and Contents. An application for a wireless communication facility permit shall be made according to the submittal requirements in MMC Chapter 22.84, Permit Processing, on forms prescribed by the city, and shall include the fee established by the current fee resolution. All wireless communication facility permit applications submitted in accordance with this Title shall include the information set forth in MMC 22.84.040(D), Project Permit Applications and in the following section. No application shall be deemed complete, nor accepted by the city, until all information set forth below has been submitted:

a. The specific locational information for all proposed facilities, and specify whether and where wireless facilities are to be located on existing poles, or will utilize replacement poles, new poles, towers, existing buildings, and/or other structures. The applicant may submit multiple sites in one wireless communication facility permit application for processing at the same time. The applicant is encouraged to batch small wireless facilities in a single application within a contiguous service area and with similar pole types and designs.

b. Show conduit and fiber necessary for and intended for use in the deployment regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party.

c. Provide detailed schematics and visual renderings of the wireless facilities

d. If the site location includes a replacement light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk 150 feet upstream and downstream of the existing light. Lighting levels are subject to the approval of the zoning administrator and must meet current city standards.

e. Provide written approval of the owner of any pole, structure, or building for the installation of its wireless communication facilities on such pole, structure, or building. For facilities to be placed on poles, such written approval shall include approval of the specific pole's engineering, including assurances that the specific pole can withstand wind and seismic loads. For city-owned poles or structures, the applicant must obtain a master lease agreement

- from the city, and submit a partially executed site agreement or addendum specific to each proposed pole location on a form prepared by the city.
- d. The applicant shall specify any element of a deployment that qualifies as an eligible facilities request.
 - e. Any application for a wireless communication facility permit that contains an element that is not exempt from review under the State Environmental Policy Act (Chapter 22.78 MMC), the Critical Areas Ordinance (Chapter 22.80 MMC), or Shoreline Management (Chapter 22.82 MMC) shall simultaneously apply under the applicable MMC when necessary.
 - f. The general standards applicable to the use of the right-of-way, as described in Title 12 MMC, Streets and Sidewalks, and within this Title shall apply to all wireless communication facility permits.
 - g. Vertical clearance shall be demonstrated by means of a design stamped by a Washington-licensed professional engineer attesting to adequate clearances to ensure that the wireless facilities will not pose a hazard to other users of the rights-of-way.
 - h. The applicant shall submit a sworn affidavit, signed by an appropriately licensed professional with experience in RF emissions and with knowledge of the proposed project, affirming that the wireless deployment will be compliant with all FCC and other governmental regulations related to human exposure to radio frequency emissions for every frequency at which the wireless facility will operate. If facilities necessary to the wireless facility are to be provided by a third party, the wireless communication facility permit shall be conditioned on an RF certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire wireless deployment if the applicant is using the same wireless facility configuration for all installations within that batch, or may submit one emissions report for each subgroup installation identified in the batch.
 - i. Submit proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.
 - j. Construction drawings submitted by the applicant shall depict all existing proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees, and structures within 250 feet from the proposed site(s). The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, hand holes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the wireless facility.
 - k. The application must contain a copy of the contractor's and all subcontractors' state licensing and bonding compliance and current city of Monroe business licenses and insurance requirements, as listed in Title 5 MMC, Business Regulations and Licensing, and Title 12 MMC, Streets and Sidewalks.
 - l. Such other information as the zoning administrator or public works director deems appropriate.
3. Permit Type. Except for where otherwise specified, applications for wireless communication facility permits shall follow the procedures for a Type I permit review, pursuant to MMC Chapter 22.84.030, Types of Project Permits.
4. Public Notice. Wireless communication facility permits shall be subject to all applicable noticing requirements in MMC 22.84.050, Public Notice Requirements.
5. Public Hearing. Pursuant to MMC Table 22.84.060(B)(2): Decision Making and Appeal Authorities, a public hearing is not required for wireless communication facility permit applications.
6. Decision. The zoning administrator may approve, deny, or conditionally approve all or any portion of the sites proposed in the wireless communication facility permit application. Denial of one or more wireless facility locations within a submission described in subsection (A)(2)(c) of this section shall not be the sole basis for denial of other locations or applicant's entire application for wireless facilities.
7. Third Party Review. The zoning administrator or their designee shall route project permit applications to consultants as the zoning administrator determines necessary. All costs of consultant review shall be billed to the project applicant.

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

9. Permit for Modifications and Collocations to Wireless Facilities. Modifications to and/or collocations with existing wireless facilities shall conform to the following requirements:

a. Permit Required. If an applicant desires to make modifications to wireless facilities, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure size, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a wireless communication facility permit.

b. Permit Not Required. A wireless communication facility permit shall not be required for routine maintenance and repair of a wireless facility within the right-of-way, or the replacement of an antenna or equipment of similar size, weight, and height; provided, that such replacement does not defeat the concealment elements used in the original deployment of the wireless facility and does not impact the structural integrity of the pole. Further, a wireless communication facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the wireless facilities. A right-of-way disturbance permit may be required for such routine maintenance, repair, or replacement.

C. Franchise for Small Wireless Facility Deployment in the Right-of-Way. Service providers who seek to utilize the public right-of-way for small wireless facility deployment in order to provide wireless communication, data transmission, or other related services must have a valid franchise to provide the specific service seeking to utilize the right-of-way, and a wireless communication facility 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 this section, including use of wireless communication facility permits, to deploy their technology. An applicant may apply for a wireless communication facility permit in parallel to obtaining a franchise; however, no wireless communication facility permit will be effective until a fully executed franchise becomes effective.

1. Franchise Grant. It is unlawful to engage in or commence construction, operation, or maintenance of a small wireless facility in the city right-of-way without a franchise issued under this section. The city council may, by ordinance, issue a nonexclusive franchise to construct, operate, and maintain small wireless facilities within the city to any person or entity, whether operating under an existing franchise or not, which complies with the applicable terms and conditions of this chapter; and provided, that such person or entity also agrees to comply with all of the provisions of the franchise. However, this shall not be deemed to require the grant of a franchise to any particular person or entity. The city council may restrict the number of franchises should it determine such a restriction would be in the public interest.

2. Purpose. A franchise granted by the city under the provisions of this section shall:

a. Permit the franchisee to engage in the business of operating a small cell network and providing personal wireless service within the city;

b. Permit the franchisee to erect, install, construct, repair, reconstruct, replace, and retain wires, cables, related electronic equipment, conduits, and other property in connection with the operation of the wireless facilities in, on, over, under, upon, along, and across rights-of-way within the city; and

c. Set forth the obligations of the franchisee under the franchise.

3. Nonexclusive Franchise. Any franchise granted pursuant to this chapter shall be nonexclusive and not preclude the city from granting other or future franchises or permits.

4. Application and Contents. An applicant for an initial franchise shall submit to the city a written application on a form provided by the city, at the time and place specified by the city for accepting applications, and accompanied by the designated application fee. In the event such costs exceed the application fee, the applicant shall pay the difference to the city within thirty days following

receipt of an itemized statement of such costs. Conversely, if such costs are less than the application fee, the city shall refund the difference to the applicant. At a minimum, an application for an initial franchise for a small wireless facility network shall contain:

- a. A statement as to the proposed franchise and information relating to the characteristics and location of the proposed small wireless facility network;
 - b. A resume of prior history of the applicant, including the expertise of the applicant in the wireless communication field;
 - c. Information demonstrating the applicant's legal, technical and financial ability to construct and operate the proposed small wireless facility network;
 - d. A list of the partners, general and limited, of the applicant, if a partnership; members, if a limited liability company; or the percentage of stock owned or controlled by each stockholder having a five percent or greater interest, if a corporation;
 - e. A list of officers, directors and key employees of the applicant, together with a description of the background and experience of all such persons;
 - f. The names and addresses of any parent entity or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;
 - g. A proposed construction and service schedule;
 - h. Any other reasonable information that the city may request.
5. Additional Information. The city shall be allowed the opportunity to ask relevant follow-up questions and obtain further information from any source. A refusal by an applicant to cooperate or provide requested information is sufficient grounds for the city to deny an application.
6. Public Hearing. Upon receipt of an application for an initial franchise and after obtaining any additional information, a public hearing shall be scheduled to allow for the submittal of public comment. At the hearing, the city council shall receive public comment regarding the following:
- a. Whether the public will benefit from granting a franchise to the applicant;
 - b. Whether the applicant appears to have adequate legal, financial and technical qualifications and capabilities to build, operate and maintain a small wireless facility network in the city;
 - c. Whether the applicant has any conflicting interests, either financial or commercial, that will be contrary to the interests of the city;
 - d. Whether the applicant will comply with all of the terms and conditions placed upon a franchisee by the franchise, this chapter and other lawfully applicable local laws and regulations; and
 - e. Whether the applicant will comply with all relevant federal and state laws and regulations pertaining to the construction, operation, and maintenance of the small wireless facility network.
7. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47USC 253 and 332 and other applicable statutes, regulations and case law. Applicants for franchises and wireless communication facility permits shall be treated in a competitively neutral and nondiscriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent; that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Wireless communication facility permit review under this chapter shall neither prohibit, nor have the effect of prohibiting, the ability of an applicant to provide telecommunications services.
8. Decision. Within the time frame prescribed by applicable law, the city council shall decide whether to grant a franchise and on what conditions. The city council's decision shall be based upon the application, any additional information submitted by the applicant or obtained by the city from any source, and public comments given. The city council may grant one or more franchises or may decline to grant any franchise.
9. Duration. The term of any franchise, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be specified in the franchise. The effective date of any franchise shall be as specified in the franchise.

10. Police Powers. In accepting any franchise, the franchisee acknowledges that its rights thereunder are subject to the police powers of the city to adopt and enforce ordinances necessary for the health, safety and welfare of the public, and it agrees to comply with all applicable laws enacted by the city pursuant to such power.

11. Use of Rights-of-Way. For the purposes of operating and maintaining a small wireless facility in the city, a franchisee may place and maintain within the rights-of-way such property and equipment as are necessary and appurtenant to the operation of the small wireless facility. Prior to construction in rights-of-way, the franchisee shall procure all necessary permits, pay all applicable fees in connection therewith, and comply with all applicable laws, regulations, resolutions, and ordinances.

12. Pole or Conduit Agreements. No franchise shall relieve franchisee of any of its obligations involved in obtaining pole or conduit agreements from any department of the city, any utility company, or from others maintaining facilities in the rights-of-way.

13. Franchise Fees. The franchisee shall pay the city franchise fees in accordance with the terms of the franchise and applicable law.

14. Taxes. Nothing in this chapter shall limit the franchisee's obligation to pay applicable local, state and federal taxes.

15. Other Authorizations. Franchisee shall comply with and obtain, at its own expense, all permits, licenses and other authorizations required by federal, state and local laws, rules, regulations and applicable resolutions and ordinances which are now existing or hereafter lawfully adopted.

16. Rules and Regulations of the City. The right and power is reserved by the city to promulgate such additional rules and regulations as it may find necessary in the exercise of its lawful police powers and in furtherance of the terms and conditions of a franchise and this chapter, and as permitted by applicable state and federal law. In the event of a conflict between a franchise and this chapter, the franchise shall govern.

17. Delegation of Powers. Any right or power of the city may be delegated by the city to any officer, employee, department or board of the city, or to such other person or entity as the city may designate to act on its behalf.

18. Technical Standards. Franchisee shall construct, install, operate, and maintain its wireless facilities in a manner consistent with all applicable federal, state and local laws and regulations, FCC technical standards and the franchise.

19. Construction Standards.

a. All facilities constructed or operated under this chapter shall be installed and maintained at such places in or upon such rights-of-way and public places as shall not interfere with the free passage of traffic, and shall conform to federal standards, state requirements, and city regulations.

b. The franchisee shall be subject to any and all requirements established by the city with regard to the placement of franchisee's facilities and equipment located in the rights-of-way and on other public property.

20. Street Cut or Repair. The franchisee shall guarantee the durability and structural integrity of any street cut or repair made by it or its agents which is necessary for the construction, installation, operation, repair, or maintenance of franchisee's facilities, provided that no action by an unrelated third party materially affects the integrity of franchisee's street cut or repair.

Franchisee shall repair or replace, at no expense to the city, any failed street cut or repair which was completed by franchisee or franchisee's agent(s).

21. Safety Requirements. The franchisee shall, at all times, install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries to the public. In furtherance thereof, the franchisee must comply with the city's traffic control requirements, including, for example, but without limitation, the use of signal devices, warning signs, and flaggers when appropriate. All of franchisee's structures, cables, lines, equipment, and connections in, over, under, and upon the rights-of-way and public ways or other places in the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe condition.

22. Permit requirements.

- a. Post-Construction As-Built. Within 30 days after construction of the small wireless facility, the permittee shall provide the city with as-builts and site photographs of the small wireless facility demonstrating compliance with the permit.
- b. Permit Time Limit. Construction of the small wireless facility must be completed within six months after the approval date by the city. The permittee may request one extension to be limited to three months, if the applicant cannot construct the small wireless facility within the original six-month period. Failure to complete construction as required by this section shall result in expiration of the permit.
- c. Site Safety and Maintenance. The permittee must maintain the small wireless facilities in a safe and working condition. The permittee shall be responsible for removal of any graffiti or other vandalism, and shall keep the site neat and orderly at all times, including but not limited to the time period immediately following maintenance or modifications on the site.
- d. Interference – WSDOT. If the small wireless facility is located near the U.S. Route 2, State Route 522, or State Route 203 corridors, then the permittee must complete cooperative testing with the Washington State Department of Transportation (WSDOT) to determine if there are interference problems with WSDOT equipment. If such interference problems exist, permittee must remediate such interference problems. If such remediation methods require modification to the small wireless facility design, location, or RF emissions, the permittee must apply with the city for a new wireless communication facility permit, pursuant to MMC 22.84.060(G)(1).
- e. Interference with City Infrastructure. The small wireless facility shall not physically or technically interfere with city-owned or operated traffic signals or telemetry. If such interference problems exist, permittee must remediate such interference problems. If such remediation methods require modification to the small wireless facility design, location, or RF emissions, permittee must apply for a new wireless communication facility permit, pursuant to MMC 22.84.060(G)(1).
- f. Additional Permit Requirements. The permittee must comply with such additional permit requirements as directed by the zoning administrator or public works director, which are of general applicability for usage of the right-of-way.

23. Regulation of Rates and Charges. The city may regulate franchisee's rates and charges to the full extent permitted by law.

24. Reimbursement. To the extent allowed by applicable law, the city may require a franchisee to reimburse the city for the city's reasonable processing and review expenses in connection with a sale or transfer of a franchise or a change in control of a franchise or franchisee. In connection with the foregoing, the city will send franchisee an itemized description of all such charges, and franchisee shall pay such amount within thirty days after the receipt of such description.

25. Franchise Renewal. Franchise renewals shall be conducted in accordance with applicable law. The city and franchisee, by mutual consent, may enter into renewal negotiations at any time during the term of a franchise.

26. Franchise Revocation. Any franchise granted by the city may be revoked during the period of such franchise, as provided in the franchise, subject to the procedural requirements provided for therein. A failure by the franchisee to comply with any of the material provisions of this chapter shall be deemed a violation of the city code.

D. Eligible Facilities Requests.

1. Application. The zoning administrator 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.

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

3. Time Frame for Review. Within sixty days of the date on which an applicant submits an application seeking approval under this chapter, the zoning administrator shall approve the application unless it determines that the application is not covered by this section.

4. Tolling of the Time Frame for Review. The sixty-day review period begins to run when the application is filed with the City, and may be tolled only by mutual agreement by the zoning administrator and the applicant, or in cases where the zoning administrator 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.
 - a. To toll the time frame for incompleteness, the zoning administrator shall provide written notice to the applicant within thirty days of receipt of the application, clearly and specifically delineating all missing documents and/or information required in the application.
 - b. The time frame for review begins running again when the applicant makes a supplemental submission in response to the city's notice of incompleteness.
 - c. Following a supplemental submission, the zoning administrator will notify the applicant within ten 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 subsection. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
5. Determination That Application Is Not an Eligible Facilities Request. If the zoning administrator determines that the applicant's request does not qualify as an eligible facilities request, the zoning administrator shall deny the application. In the alternative, to the extent additional information is necessary, the zoning administrator may request such information from the applicant to evaluate the application under other provisions of this chapter and applicable law.
6. Failure to Act. In the event the zoning administrator 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 grant of the eligible facilities request does not become effective until the applicant notifies the zoning administrator in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
7. Remedies. Both the applicant(s) and the city may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

22.62.080 Obsolescence or Abandonment.

- A. Removal of Obsolescent or Abandoned Facilities.
 1. Owners and operators of WCFs shall provide the zoning administrator with copies of any notice of intent to cease operations that is provided to the Federal Communications Commission.
 2. All WCFs shall be removed by the facility owner within 180 days of the date it ceased to be operational, or if the facility falls into disrepair and is not maintained. Disrepair includes structural features, paint, landscaping, or general lack of maintenance, which could result in safety or visual impacts.
- B. Removal Upon Undergrounding. A WCF must be removed at no expense to the City if co-located on an electrical system facility or utility support structure that is subsequently undergrounded.

22.62.090 Deviations.

- A. Applicability. Except as otherwise provided in this chapter, no wireless communication facility shall be used or developed contrary to any applicable development standard unless a deviation has been granted pursuant to this section. These provisions apply exclusively to wireless communication facilities. The approval authority for wireless communication facilities deviations is the zoning administrator.
- B. Submittal Requirements. An application for a deviation from the provisions regulating wireless communication facilities shall include:
 1. A written statement demonstrating how the deviation would meet the criteria in this section.
 2. A site plan that includes:
 - a. Description of the proposed siting's design and dimensions, as it would appear with and without the deviation.
 - b. Elevations showing all components of the wireless communication facility, as it would appear with and without the deviation.

c. Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the deviation.

C. Criteria. An application for a wireless communication facility deviation shall be granted if the following criteria are met:

1. The deviation is consistent with the purpose of the development standard for which the deviation is sought.
2. Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.
3. The owner demonstrates the existence of either of the following:
 - a. Material Inhibition of Wireless Service.
 - i. Compliance with this chapter's standards would materially inhibit the ability of the carrier to provide wireless service; and
 - ii. The deviation is narrowly tailored to allow the carrier to provide wireless service, such that the wireless communications facility conforms to this chapter's standards to the greatest extent possible; or
 - b. Minimization of Impacts. The deviation would minimize or eliminate negative impacts to surrounding properties and their uses, through a utilization of existing site characteristics, including, but not limited to, the site's size, shape, location, topography, improvements, and natural features. Negative impacts are minimized or eliminated if there is:
 - i. A decrease in negative visual impacts, including, but not limited to, visual clutter;
 - ii. Better preservation of views or view corridors;
 - iii. A decrease in negative impacts on property values; or
 - iv. A decrease in any other identifiable negative impacts to the surrounding area's primary uses.