

ORDINANCE NO. 2953

AN ORDINANCE OF THE CITY OF MOSES LAKE, WASHINGTON, RELATING TO WIRELESS COMMUNICATION FACILITIES, ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390 FOR WIRELESS COMMUNICATION FACILITIES, DECLARING AN EMERGENCY, ADOPTING FINDINGS OF FACT, 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, 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, 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 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 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, the FCC recently adopted the Declaratory Ruling, Order and Regulation 18-133, which imposes limitations on local municipalities including related to review processing timelines and aesthetic requirements for small cell facilities; and

WHEREAS, the City Council finds that the proposed interim 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 Reports and Orders, and are therefore in the public interest;

WHEREAS, Chapter 18.78 MLMC, Personal Wireless Service Facilities, currently governs the City's regulation of wireless communication facilities; and

WHEREAS, some of the existing city regulations for wireless communication facilities are more than fifteen years old and federal laws, regulations, court decisions, wireless technology and consumer usage have reshaped the environment within which Wireless Communications Facilities, are permitted and regulated; and

WHEREAS, the potential conflict between the City's existing land use review process for wireless communications facilities and the preemptive federal review requirements for wireless communications facilities create a time sensitive emergency requiring the adoption of an interim zoning ordinance; and

WHEREAS, the City is authorized to impose interim land use controls for up to one (1) year if a work plan is developed for related studies providing for such longer periods pursuant to RCW 35A.63.220 and RCW 36.704.390; and

WHEREAS, a public hearing on these interim regulations will be scheduled within sixty (60) days of ordinance adoption, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Recitals Incorporated. The Recitals set forth above are hereby adopted and incorporated as Findings of Fact of the City Council.

Section 2. Additional Findings. The Council may adopt further additional findings after the public hearing is held and evidence presented to the City Council.

Section 3. Notwithstanding the provisions of MLMC 18.78.030, Small Wireless Facilities and Eligible Facilities Requests shall be regulated through this Ordinance and not Chapter 18.78 MLMC.

Section 4. This purpose of this ordinance is to:

- A. Establish clear regulations for the siting and design of Wireless Communication Facilities (WCFs) consistent with state and federal regulations;
- B. Promote the health, safety, and general welfare of the Moses Lake community by regulating the siting of WCFs;
- C. Minimize visual, safety, aesthetic, and environmental impacts of WCFs on surrounding areas by establishing standards for location, structural integrity, and compatibility;
- D. Encourage the location and collocation of communications equipment on existing structures; and
- E. Accommodate the growing need and demand for communication services.

Section 5. The following new Section is hereby adopted:

Definitions.

- A. "Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet, or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, utility pole, building, or other structure for the purpose of providing wireless services.
- B. "Co-location" means (1) mounting or installing an antenna facility on a pre-existing structure or (2)

modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Provided that, for purposes of Eligible Facilities Requests, "collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes.

- C. "Macro facility" means is a large wireless communication facility that provides radio frequency coverage for a cellular telephone network. Generally, macro cell 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. Macro cell facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers.
- D. "Small wireless facility" has the same meaning as defined in 47 CFR § 1.6002.
- E. "Structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless communication service (whether on its own or comingled with other types of services).
- F. "Transmission equipment" means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services included, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- G. "Unified enclosure" means a small wireless facility providing concealment of antennas and equipment within a single enclosure.
- H. "Utility pole" means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

Section 6. The following new Section is hereby adopted:

Small Wireless General Provisions.

- A. Small wireless facilities shall not be considered nor regulated as essential public facilities.
- B. Small wireless facilities located outside of the public rights-of-way may be either a primary or a secondary use. A different use of an existing structure on the same lot shall not preclude the installation of a small wireless facility.
- C. Small wireless facilities located within the public right-of-way pursuant to a valid franchise are outright permitted uses in every zone of the City but still require a small wireless facility permit pursuant to this ordinance.

Section 7. The following new Section is hereby adopted:

Small Wireless Deployment.

- A. Overview. In order to manage its rights-of-way in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City, the City of Moses Lake has adopted this administrative process for the deployment of small wireless facilities. The City and applicant for a franchise and other permits associated with the deployment of small wireless facilities face challenges in coordinating applicable legislative and administrative processes under the Federal Communications Commission (FCC) regulations. A franchise for the use of the City's right-of-way is a contract which requires approval by the City Council. The small wireless permits are issued by the

Municipal Services Director, or his/her designee. Applicants are encouraged and expected to provide all related applications in one submittal, unless they have already obtained a franchise.

- B. **Application Process.** The Municipal Services Director, or his/her designee, is authorized to establish franchise and other application forms to gather the information required by these ordinances from applicants and to determine the completeness of the application process as provided herein. The application shall include Parts A, B, and C as described in this subsection below.
1. **Franchise.** The process typically begins with and depends upon approval of a franchise for the use of the public right-of-way to deploy small wireless facilities if any portion of the applicant's facilities is to be located in the right-of-way. A complete application for a franchise is designated as Part A. An applicant with a franchise for the deployment of small wireless facilities in the City may proceed to directly apply for a small wireless facility permit and related approvals (Parts B and C). An applicant at its option may utilize phased development. Because franchises are required by federal law to be competitively neutral, the City has established a franchise format for use by all right-of-way users.
 2. **Small Wireless Facility Permits.** Part B of the application requires specification of the small wireless facility components and locations as further required in the small wireless permit application described in Section 8 of this Ordinance.
 3. **Associated Permit(s).** Part C of the application shall attach all associated permits requirements such as applications or check lists required under the Critical Areas, Shoreline Management Plan, or SEPA ordinances. Applicants for deployment of new small wireless poles shall comply with the requirements in this Chapter.
 4. **Leases.** An applicant who desires to attach a small wireless facility any utility pole or light owned by the City shall include an application for a lease as a component of its application. The City Manager, or his/her designee, is authorized to approve leases in the form approved for general use by the City Council for any utility pole or light pole in the right-of-way. Leases for the use of other public property, structures, or facilities shall be submitted to the City Council for approval.

Section 8. The following new Section is hereby adopted:

Small Wireless Permit Application.

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

- A. The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement, or new poles, towers, existing buildings, or other structures. Ground-mounted equipment, conduit, junction boxes, and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:
1. The location of overhead and underground public utility, telecommunication, cable, water, sewer drainage, and other lines and equipment in the rights-of-way along the proposed route;

2. The specific structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a plan for protecting, replacing, and restoring any areas to be disturbed during construction.
 3. Compliance with the aesthetic requirements of this Chapter.
- B. The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards, as well as assurances that the specific pole can withstand wind and seismic loads, from the pole owner, unless the pole owner is the City. Submission of the lease agreement between the owner and the applicant is not required. For city-owned poles or structures, the applicant must obtain a lease from the City prior to or concurrent with the small wireless permit application and must submit as part of the application the information required in the lease for the City to evaluate the usage of a specific pole.
 - C. The applicant can batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.
 - D. Any application for a small wireless facility located in the right-of-way adjacent to a parcel zoned for residential use shall demonstrate that it has considered the following:
 1. Whether a small wireless facility is currently installed on an existing pole in front of the same residential parcel. If a small wireless facility exists, then the applicant must demonstrate that no technically feasible alternative location exists which is not in front of the same residential parcel.
 2. Whether the proposed small wireless facility can be screened from residential view by choosing a pole location that is not directly in front of a window or views.
 - E. Any application for a small wireless permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and Chapter 16A.23 SMC. Further, any application proposing small wireless facilities in the Shoreline jurisdiction (pursuant to Chapter 19.06 MLC) or in Critical Areas (pursuant to Chapter 19.03 MLC) must indicate that the application is exempt or comply with the review processes in such codes.
 - F. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facilities will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the Small Wireless facility will operate. If facilities which generate RF radiation necessary to the Small Wireless facility are to be provided by a third party, then the small wireless permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch.
 - G. The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.
 - H. A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that both construction plans and final construction of the small wireless facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads as

established by the International Building Code. Further, the construction drawings 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. The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholds, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small wireless facility.

- I. A traffic control plan.
- J. The small wireless facilities permit shall include those elements that are typically contained in the right-of-way use permit to allow the applicant to proceed with the build-out of the small wireless facility deployment.
- K. Recognizing that small wireless facility technology is rapidly evolving, the Municipal Services Director, or his/her designee, is authorized to adopt and publish standards for the technological and structural safety of City-owned structures and to formulate and publish application questions for use when an applicant seeks to attach to City owned structures.

Section 9. The following new Section is hereby adopted:

Small Wireless Review Process.

- A. Review. The following provisions relate to review of applications for a small wireless facility permit.
 - 1. Only complete applications for a small wireless permit containing all required submission elements described in Section 8 of this ordinance shall be considered by the City. Incomplete applications that are not made complete by the applicant within sixty (60) days of initial submission of the application materials shall be deemed withdrawn.
 - 2. In any zone, upon application for a small wireless permit, the City will permit small wireless deployment on existing or replacement utility poles conforming to the City's generally applicable development and design standards of this Chapter, except as provided in subsection B below.
 - 3. Vertical clearance shall be reviewed by the Municipal Services Director, or his/her designee, to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-ways.
 - 4. 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.
 - 5. The City shall make every reasonable effort, consistent with any applicable provisions of state or federal law, and the preservation of the City's health, safety, and aesthetic environment, to comply with the Federal presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities to the fullest extent possible.
- B. Eligible Facilities Requests. The design approved in a small wireless facility permit shall be considered concealment elements and such facilities may only be expanded upon an Eligible Facilities Request described in Section 16 of this ordinance when the modification does not defeat the concealment elements of the small wireless facility.
- C. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC §253 and 47 USC §332 and other applicable statutes, regulations and

case law. Applicants for franchises and the small wireless facility permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers, utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this ordinance shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

- D. **Final Decision.** Any decision by the Municipal Services Director, or his/her designee, shall be final and not be subject to administrative appeals.
- E. **Withdrawal.** Any applicant may withdraw an application submitted pursuant to Section 8 of this ordinance 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 Municipal Services Director's, or his/her designee's, decision, then reimbursement of fees submitted in association with said application shall be prorated to withhold the amount of City costs incurred in processing the application prior to time of withdrawal. If such withdrawal is not accomplished prior to the Municipal Services Director 's, or his/her designee's, decision , there shall be no refund of all or any portion of such fee.

Section 10. The following new Section is hereby adopted:

Small Wireless Permit Requirements.

- A. The grantee of any permit shall comply with all of the requirements within the small wireless permit.
- B. Small wireless facilities installed pursuant to a small wireless facility permit may proceed to install the approved small wireless facilities without the need for an additional right-of-way use permit if construction is commenced within thirty (30) days of approval by providing email or written notice to the Municipal Services Director, or his/her designee. Facilities approved in a small wireless permit in which installation has not commenced within thirty (30) days of the approval of a small wireless facility permit shall apply for and be issued a right-of-way use permit to install such small wireless facilities in accordance with the standard requirements of the City for use of the right-of-way.
- C. **Post-Construction As-Builts.** Within thirty (30) days after construction of the small wireless facility, the grantee shall provide the City with as-builts of the small wireless facilities demonstrating compliance with the permit and site photographs.
- D. **Permit Time Limit.** Construction of the small wireless facility must be completed within six (6) months after the approval date by the City. The grantee may request one (1) extension to be limited to three (3) months, if the applicant cannot construct the small wireless facility within the original six (6) month period.
- E. **Site Safety and Maintenance.** The grantee must maintain the small wireless facilities in safe and working condition. The grantee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

Section 11. The following new Section is hereby adopted:

Modifications to Small Wireless Facilities.

- A. If a grantee desires to make a modification to an existing small wireless facility, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a small wireless facility permit.
- B. A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility within the rights-of-way, or the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small wireless facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a small wireless facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small wireless facility. Right-of-way use permits may be required for such routine maintenance, repair, or replacement consistent with Chapter 12.16 MLMC.

Section 12. The following new Section is hereby adopted:

Small Wireless Consolidated Permit.

- A. The issuance of a small wireless permit grants authority to construct small wireless facilities in the rights-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both the public works and the community and economic development departments. If the applicant requires a new franchise to utilize the right-of-way, the franchise approval may be consolidated with the small wireless facility permit review if requested by the applicant. As an exercise of police powers pursuant to RCW 35.99.040(2), the small wireless facility permit is not a right-of-way use permit, but instead a consolidated public works and land use permit and the issuance of a small wireless facility permit shall be governed by the time limits established by federal law for small wireless facilities.
- B. The general standards applicable to the use of the rights-of-way described in Chapter 12.16 MLMC shall apply to all small wireless facility permits.

Section 13. The following new Section is hereby adopted:

Small Wireless Fees and Other Costs.

- A. **Application and Review Fee.** Any applicant for a franchise pursuant to this ordinance shall pay an application and review fee or fee deposit in an amount as determined by the City Council. This application and review fee covers the actual costs associated with the City's initial review of the application; provided, however, that the applicant shall also be required to pay all necessary permit fees. This application and review fee shall be deposited with the City as part of the application filed pursuant to this ordinance.
- B. **Other City Costs.** All grantees shall, within 30 days after written demand therefor, reimburse the City for all direct and actual costs and expenses incurred by the City in connection with any grant, modification, amendment, renewal, or transfer of any franchise.
- C. **Permit Fee.** Prior to issuance of a right-of-way permit or small wireless facility permit, the applicant shall pay a permit fee in an amount as determined by the City Council, or the actual costs incurred by the City in reviewing such permit application.

Section 14. The following new Section is hereby adopted:

Design and Concealment Standards for Small Wireless Deployments. Small wireless facility deployments whether permitted in the right-of-way under a franchise agreement or permitted in accordance with this chapter shall conform to the following design standards:

- A. Small wireless facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right-of-way or non-wooden poles outside of the right-of-way shall conform to the following design criteria:
1. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning no more than six (6) inches off of the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.
 2. The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.
 3. All conduit, cables, wires, and fiber must be routed internally in the non-wooden pole. Full concealment of all conduit, cables, wires, and fiber is required within mounting brackets, shrouds, canisters, or sleeves if attaching to exterior antennas or equipment.
 4. An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware or brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.
 5. Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.
 6. The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary; provided that the height of the replacement pole cannot be extended further by additional antenna height.
 7. 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% increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection E(4) of this Section.
 8. The use of the pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole

purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

B. Wooden pole design standards. Small wireless facilities located on wooden poles shall conform to the following design criteria:

1. The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.
2. A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation or clearance from electrical and wireline facilities. A "pole extender" as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.
3. Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.
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 wooden pole on which they are attached.
5. Antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.
6. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume.
7. A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection B(1) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.
8. The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.
9. An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

10. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.
 11. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground-mounted pursuant to subsection of the Section. 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 utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.
 12. An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs, provided that such location does not interfere with the operation of the banners or signs.
 13. The visual effect of the small wireless facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.
 14. The use of the wooden pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.
 15. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing utility pole measured at the base of the pole.
 16. All cables and wires shall be routed through conduit along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small wireless.
- C. Small wireless facilities attached to existing buildings, shall conform to the following design criteria:
1. Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
 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 it complements 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.
- D. Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.
1. Each strand mounted facility shall not exceed three (3) cubic feet in volume;
 2. Only one strand mounted facility is permitted per cable between any two existing poles;
 3. The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance technically necessary or is required by the pole owner for safety clearance;
 4. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
 5. Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets; and
 6. Pole mounted equipment shall comply with the requirements of subsections A and B of this Section.
 7. Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).
 8. Strand mounted facilities are prohibited on non-wooden poles.
- E. General Requirements.
1. Ground-mounted equipment in the rights-of-way is prohibited, unless such facilities are placed underground or the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground-mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights-of-way are prohibited.
 2. No equipment shall be operated so as to produce noise in violation of Chapter 173-60 WAC.
 3. Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC §§ 253 and 332.
 4. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic signal warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.

5. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.
6. No signage, message, or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches); provided that, signs are permitted as concealment element techniques where appropriate.
7. Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.
8. Side arm mounts for antennas or equipment must be the minimum extension necessary and for wooden poles may be no more than twelve (12) inches off the pole and for non-wooden poles no more than six (6) inches off the pole.
9. The preferred location of a small wireless facility on a pole is the location with the least visible impact.
10. Antennas, equipment enclosures, and ancillary equipment, conduit, and cable shall not dominate the structure or pole upon which they are attached.
11. Except for locations in the right-of-way, small wireless facilities are not permitted on any property containing a residential use in the residential zones.
12. The City may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way in when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.
13. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

Section 15. The following new Section is hereby adopted:

New Poles in the Rights-of-Way for Small Wireless Facilities.

- A. New poles, as compared to replacement poles, within the rights-of-way are only permitted if the applicant can establish that:
 1. The proposed small wireless facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower, or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;
 2. The proposed small wireless facility receives approval for a concealment element design, as described in subsection C of this Section;

3. The proposed small wireless facility also complies with the City's Shoreline Master Program, Title 19 MLMC, and SEPA, Title 14 MLMC, if applicable; and
 4. No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Ordinance (Chapter 19.03 MLMC), except when determined to be exempt pursuant to said ordinance.
- B. The Municipal Services Director or his/her designee may approve, approve, with conditions, or deny an application for a new pole without notice and his or her decision shall be final on the date issued.
- C. The concealment element design shall include the design of the screening, fencing, or other concealment technology for a tower, pole, or equipment structure, and all related transmission equipment or facilities associated with the proposed small wireless facility, including but not limited to fiber and power connections.
1. The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights-of-way, including similar height to the extent technically feasible. Any concealment element design for a small wireless facility on a decorative pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the decorative pole. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color, and texture - or the appearance thereof - as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to Section 14 of this ordinance.
 2. If the Municipal Services Director, or his/her designee, has already approved a concealment element design either for the applicant or another small wireless facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.
- D. Even if an alternative location is established pursuant to subsection A(1) and A (2), the Municipal Services Director, or his/her designee, may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.
- E. Prior to the issuance of a permit to construct a new pole or ground-mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole or ground-mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed small wireless facility is more than sixty (60) feet.
- F. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function

of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections of the streetscape.

Section 16. The following additional definitions shall only apply to eligible facilities requests as described in this Section.

Eligible Facilities Requests.

A. Additional Definitions.

1. **"Base Station":** A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:
 - a. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - b. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small wireless networks).
 - c. Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subparagraph (i) and (ii) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
 - d. The term does not include any structure that, at the time the Eligible Facilities Request application is filed with the City, does not support or house equipment described in subparagraph (I)(a) and (I)(b) above.
2. **"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 communication purposes.
3. **"Director":** The Municipal Services Director or designee.
4. **"Eligible Facilities Request":** Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - a. Collocation of new transmission equipment;
 - b. Removal of transmission equipment; or
 - c. Replacement of transmission equipment.
5. **"Eligible Support Structure":** Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

6. "Existing": A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
7. "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 (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten (10) 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 (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
 - c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 - d. It entails any excavation or deployment outside the current site;
 - e. It would defeat the concealment elements of the eligible support structure; or
 - f. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.
8. "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.
9. "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.

- B. **Application.** The Director shall prepare and make publicly available an application form used 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.
- C. **Qualification as an Eligible Facilities Request.** Upon receipt of an application for an Eligible Facilities Request, the Director shall review such application to determine whether the application qualifies as an Eligible Facilities Request.
- D. **Timeframe for Review.** Within sixty (60) days of the date on which an applicant submits an Eligible Facilities Request application, the Director shall approve the application unless it determines that the application is not covered by this section.
- E. **Tolling of the Time Frame for Review.** The sixty (60) day review period begins to run when the pre-application or application is filed and may be tolled only by mutual agreement by the Director and the applicant or in cases where the Director determines that the application is incomplete. The timeframe for review of an Eligible Facilities Request is not tolled by a moratorium on the review of applications.
 - 1. To toll the timeframe for incompleteness, the Director shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.
 - 2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
 - 3. Following a supplemental submission, the Director will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- F. **Determination That Application Is Not an Eligible Facilities Request.** If the Director determines that the applicant's request does not qualify as an Eligible Facilities Request, the Director shall deny the application.
- G. **Failure to Act.** In the event the Director fails to approve or deny a request for an Eligible Facilities Request 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 Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

Section 17. Appeals. Small Wireless Facilities Permit decisions, other than administrative approvals relating to Small Wireless Facilities and Eligible Facilities Requests, are final decisions. Approvals or denials of a Small Wireless Facility Permit or Eligible Facilities Requests are administrative approvals and are not subject to appeal.

Section 18. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.704.390, the City Council will hold a hearing on this interim ordinance within sixty (60) days of adoption in order to take public testimony. The City Council may, in its discretion, adopt additional findings justifying the interim development regulations after the close of the hearing.

Section 19. Duration of Interim Regulations. The interim amendments adopted by this ordinance shall remain in effect until one (1) year from the effective date and shall automatically expire unless the same

are extended as provided in RCW 36.70A.390 and RCW 35A.63.220 prior to that date, or unless the same are repealed or superseded by permanent amendments prior to that date.

Section 20. Planning Commission Work Program. The City of Moses Lake Planning Commission is hereby directed to review the interim regulations in 2020. The Commission shall make a recommendation on whether said amendments, or some modification thereof, should be permanently adopted. The Moses Lake Planning Commission is directed to complete its review, to conduct such public hearings as may be necessary or desirable, and to forward its recommendation to the Moses Lake City Council prior to the expiration of the interim amendments. The work program shall include input from wireless carriers, existing franchisees, and City staff.

Section 21. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court, board or tribunal of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 22. Enforcement. Violations of this ordinance are enforceable to the same extent as other violations of Title 18 MLC and are equally subject to injunctive and other forms of civil relief that the City may seek.

Section 23. Conflict. In the event that there is a conflict between the provisions of this ordinance and any other City ordinance, the provisions of this ordinance shall control.

Section 24. Declaration of Emergency. The Moses Lake City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare of the City of Moses Lake, pursuant to RCW 35A.13.190.

Section 25. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein.

Adopted by the City Council and signed by its Mayor on June 23, 2020.



David Curnel, Mayor

ATTEST:

APPROVED AS TO FORM:



Debbie Burke, City Clerk



Katherine L. Kenison, City Attorney

Vote:	Riggs	Liebrecht	Myers	Jackson	Curnel	Eck	Hankins
Aye	✓	✓	✓	✓	✓	✓	✓
Nay							
Abstain							
Absent							

Date Published: June 29, 2020

Date Effective: June 23, 2020