

Chapter 6.08

Co-Location of Small Wireless Facilities in the Rights-of-Way

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6.08.010 Purpose

The purpose of this Chapter is to establish a process for managing, and uniform requirements for acting upon, requests for the co-location of small wireless facilities (SWFs) within the rights-of-way consistent with the City's obligation to promote the public health, safety, and welfare, to manage the rights-of-way, and to ensure that the public is not incommoded by the use of the rights-of-way for the placement of SWFs. The City recognizes the importance of personal wireless services facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of SWFs in its rights-of-way. This Chapter shall be interpreted consistent with those provisions.

6.08.020 Applicability

The provisions of this Chapter regulate the co-location and design of SWF antennas and SWF equipment in the City rights-of-way. The provisions of this chapter do not apply to wireless communication facilities or purpose-built poles which are both regulated under the terms of the Land Use Code (refer to BCC 20.20.195).

6.08.030 Scope

A. General. There shall be a type of City permit entitled a "Small Wireless Facility Permit," (SWF Permit) which shall be subject to all the applicable requirements of Title 6. Unless exempted, every person who desires to co-locate a SWF on a city pole or utility pole within the right-of-way shall obtain a

SWF Permit authorizing the placement or modification in accordance with this Chapter. Except for SWFs, no other wireless communication facilities shall be permitted pursuant to this Chapter.

B. Exemptions. This Chapter does not apply to:

1. The placement or modification of facilities by the City or by any other agency of the state solely for public health, welfare and safety purposes.
2. Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
3. Installation of a SWF on the strand between two utility poles, provided that the cumulative volume of all SWF components located on the strand shall not exceed 1 cubic foot and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles or intensification in use of electrical power.

C. Pre-existing Wireless Communications Facilities in the Rights-of-Way. Any WCF already existing in the right-of-way as of the date of this Chapter's adoption shall remain subject to the provisions of the Land Use Code pursuant to which it was permitted or as subsequently amended.

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

6.08.040 Administration

A. **Authority.** It shall be the responsibility of the Transportation Director or their designee to administer the provisions of this Chapter. As part of the administration of this Chapter, the Director is authorized to:

1. Administer and interpret the provisions of this Chapter;
2. Develop and implement standards governing the placement and modification of SWFs consistent with the requirements of this Chapter, including regulations governing co-location attachments and resolution of conflicting applications for placement of SWF;
3. Develop forms and procedures for submission of applications for placement or modification of SWFs, and proposed changes to any city facilities consistent with this Chapter;
4. Collect, as a condition of SWF Permit submittal and issuance, any one-time fee required by this Chapter;
5. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
6. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;

7. Determine whether to approve, approve subject to conditions, or deny an application;
8. Require deactivation or removal of SWFs not deployed in compliance with an issued permit or the terms of applicable laws or licenses; and
9. Take such other steps as may be required to timely act upon applications for placement of SWFs, including entering into agreements to mutually extend the time for action on an application and responding to claims that denial would result in a prohibition or effective prohibition under applicable federal law.

B. Extensions and Final Decisions.

1. Limitation on Extensions. An extension may not be granted where such extension would result in approval of the application by operation of law.
2. Final Decisions. A decision of the Director is final.

6.08.050 Requirements for Small Wireless Facility Co-locations in Rights-of-Way.

A. Generally. Small wireless facility co-locations shall meet the minimum requirements set forth in this Chapter and the requirements of any other applicable law.

B. Regulations. The decisions on applications for co-locations of SWFs shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined by the Director that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services through a SWF, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

C. Minimum Requirements. Wireless facilities shall be installed and modified in a manner that:

1. Minimizes risks to public safety, avoids placement of ground-based facilities in underground areas, avoids installation of new purpose-built SWFs in the rights-of-way, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located.
2. Ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.
3. Other Applicable Requirements. In addition to the SWF Permit required by this Chapter, the placement of a SWF in the right-of-way requires the persons who will own or control those facilities to obtain all necessary federal (including FCC or FAA requirements), state and local licenses, permits and approvals including but not limited to, a RUA, Right-of-Way use permits, traffic control plans, proof of agency and permits for the construction, maintenance and operation of the SWF or installation of a replacement pole (collectively referred to hereinafter as "Government Approvals") at its sole expense.

4. Ensures compliance with all standards for noise emissions.
5. Ensures RF Exposure Compliance. All equipment must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate safe exposure to RF emissions.

D. Design Standards for Co-locations in the Right-of-Way. The City of Bellevue has a history of investing in and maintaining rights-of-way in a manner that reflects the character of existing and future planned development by taking into account the land use districts bounding the rights-of-way. Applications for SWF Permits shall incorporate specific concealment elements and design standards described in the section to minimize visual impacts. Unless it is determined that another design is equivalent to or less intrusive through the Optional Pre-Approved Design Process, the following standards shall be met.

1. General Standards Applicable to all SWF Co-locations
 - a. Pole-Mounted Antenna(s) – Mounting Locations. Pole-mounted antennas are the preferred deployment option and shall be located either: (a) flush-mounted to the pole as close as technically feasible, but in no case greater than a distance of 12 inches measured from the outside edge of the pole to the inside edge of the antenna; (b) side-mounted to the pole as close as technically feasible, but in no case greater than a distance of 12 inches measured from the outside edge of the pole to the inside edge of the antenna; or (c) mounted to the top of the pole in a canister that does not exceed 18 inches in diameter. All SWF antenna shall be located entirely within the limits of the right of way. When an installation includes more than one flush-mounted or side-mounted antenna, the antennas shall be located as symmetrically around the pole to which they are affixed as is technically feasible.
 - b. Pole-Mounted Antenna(s) – Maximum Size. Each individual antenna that is located inside an antenna enclosure shall not exceed a maximum volume of 3 cubic feet. Each individual antenna that has exposed elements including the mounting brackets, shall fit within an imaginary enclosure that does not exceed a maximum volume of 3 cubic feet. In no case shall the maximum volume of antennas located within a shroud or fitting within an imaginary enclosure on a single pole exceed 15 cubic feet.
 - c. Pole-Mounted Equipment – Shrouding and Maximum Size. Pole-mounted equipment is the preferred deployment option and shall be: (i) consolidated to the greatest extent feasible; (ii) covered by a full or partial shroud which creates a uniform appearance and conceals all equipment, cabling and attachment points; and (iii) no larger than is reasonably necessary to conceal the consolidated equipment, but in no case shall the maximum volume exceed 15 cubic feet. The electrical disconnect may be located independent of the consolidated equipment if necessary to maintain disconnect functionality and maintenance worker safety.
 - d. Ground-Based Equipment. If it is technically infeasible to pole-mount all of the equipment within the maximum 15 cubic feet volume, then equipment may be ground-based in the right-of-way pursuant to the following standards.

- i. Any necessary ground-based equipment in an undergrounded area shall be undergrounded.
 - ii. Ground-based equipment not located in an undergrounded area should be undergrounded. If it is technically infeasible to underground the ground-based equipment or to pole-mount the equipment in compliance with the maximum size standards of Paragraph D.1.c, the ground-based equipment may be located fully or partially above-grade provided that: (i) the volume of ground-based equipment that is located above-grade shall not exceed a maximum of 13 cubic feet; (ii) the ground-based equipment shall be aesthetically compatible with other above-grade utilities (e.g. signal boxes, electrical equipment, etc.) that are located within 600 feet of the pole; and (iii) the ground-based equipment shall not encroach into any areas of required sidewalk.
- e. Unified Enclosure. Antennas and equipment may be consolidated in a unified enclosure, provided that the consolidation shall be: (i) fully contained within a single enclosure; (ii) no larger than is reasonably necessary to conceal the antenna(s) and equipment, but in no case shall the maximum volume of a unified enclosure on a single pole exceed 15 cubic feet; (iii) mounted in compliance with the locational criteria of Paragraph D.1.a of these Design Standards; and (iv) mounted in compliance with the locational criteria of Paragraphs D.2.a or D.3.a of these Design Standards. The electrical disconnect may be located independent of the consolidated equipment if necessary to maintain disconnect functionality and worker safety. Only one consolidated installation is allowed per pole, and consolidated installations may not be co-located on a pole with other antenna(s) or equipment.
- f. Replacement Poles shall be located within 10 feet of the existing pole being replaced unless otherwise approved by the Director. A replacement pole: (i) shall continue to fulfill all of the uses that existed on the original pole prior to its replacement; (ii) shall be located entirely within the limits of the right of way; and (iii) shall not require the removal of a street tree that cannot otherwise be replaced or relocated in a manner that will accommodate both the street tree and the replacement pole.
- g. Visual Impact. All antenna(s) and equipment shall have subdued colors and non-reflective materials that match the color of the pole upon which it is placed. To the greatest extent technically feasible, contrast between the pole and attached antenna(s) and equipment, colors, finishes, brackets and configuration shall be minimized.
- h. Public Safety/Codes. Antenna(s) and equipment shall not constitute an obstruction and shall comply with all applicable codes, laws (including ADA), standards and regulations. Antenna(s) and equipment must comply with applicable noise limitations including BCC 9.18 and BCC 20.20.525. In the event of a conflict between these Design Standards and any applicable health and safety codes, such health and safety codes shall govern, but only to the minimum extent necessary to avoid a violation.

- i. Locational Considerations. Antenna(s) and equipment shall not be located within 50 feet of an intersection identified as a Key City Entry or a Neighborhood Identity Point on Comprehensive Plan Map UD-1.
 - j. Advertising Devices, Signs and Lighting.
 - i. No advertising, branding or advertising devices or elements shall be placed in, on or about the SWF unless otherwise approved by the City as a concealment technique.
 - ii. An emergency telephone number shall be posted and maintained on each SWF. No other signs are permitted, unless required by Law. Such sign may not exceed eight (8) inches in height and the width of the pole or the minimum necessary to meet FCC requirements. The sign shall contain the pole identification number, service number and emergency contact for both the operator and backhaul provider. The mounting height of the sign shall be consistent with state and federal law.
 - iii. No lighting on a SWF is permitted in excess of what is required to replace pre-existing functionality on the pole required by law.
2. Specific Additional Standards Applicable to SWFs Co-located on City Poles. The following specific standards apply to SWFs co-located on city poles in addition to the general requirements contained in paragraph D.1 of this section.
- a. Pole-Mounted Equipment - Mounting Locations. Any pole-mounted equipment shall be located: (i) within the top 1/3 of the pole, and no less than 10 feet from the ground under any circumstances; and (ii) located entirely within the limits of the right of way.
 - b. Replacement Poles. If a replacement pole is proposed, then such pole shall be a standard pole approved for use at that location of the City or designed to utilize materials and specifications approved by the City Transportation Department in its discretion.
 - c. Wiring. Transmission, fiber, power cables and any other conduit shall be contained within any concrete, wood or metal pole. Wires contained within the interior of the pole are not included in the calculation of maximum equipment volume. No wiring shall be visible on the exterior of the pole. Wire connecting the antenna(s) to the antenna equipment shall be pulled as tight as technically feasible or shrouded. Loops of extra wire shall not be lashed to the pole, to electrical wires supported by the pole, or to any pole-mounted antenna equipment.
3. Specific Additional Standards Applicable to SWFs Co-located on Utility Poles. The following specific standards apply to SWFs co-located on utility poles in addition to the general requirements contained in paragraph D.1 of this section.
- a. Pole-Mounted Equipment - Mounting Locations. Any pole-mounted equipment shall be located: (i) pursuant to separation requirements of the utility pole owner as necessary to ensure proper functioning of the utility service and no less than 10 feet from the ground under any circumstances; and (ii) located entirely within the limits of the right of way.

- b. **Wiring.** To the extent technically feasible, transmission, fiber, power cables and any other conduit should be contained within any concrete, wood or metal pole or its replacement. Wires that are not technically feasible to contain within a utility pole or its replacement shall be enclosed in conduit and included in the calculation of maximum equipment volume. No wiring shall be visible on the exterior of the pole. Wire connecting the antenna(s) to the antenna equipment shall be pulled as tight as technically feasible or shrouded. Loops of extra wire shall not be lashed to the pole, to electrical wires supported by the pole, or to any pole-mounted antenna equipment.

6.08.060 Applications

- A. **Submittal Requirements.** The Director shall specify submittal requirements, including type, detail, and standards for an application to be complete. The Director may require additional material such as maps, studies, or photographic simulations when the Director determines such material is needed to adequately assess the proposed project.
- B. **Waivers of Submittal Requirements.** The Director may waive specific submittal requirements determined to be unnecessary for review of an application. Requests for waivers from any submittal requirement shall be made in writing to the Director or his or her designee. The Director may grant or deny a request for a waiver pursuant to this subsection. The Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the City code.
- C. **Notice of Incompleteness.** For SWF Permits, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the Director by notifying the applicant and identifying the material omitted from the application.
- D. **Applications Denied Without Prejudice.** To promote efficient review and timely decisions, the City may deny an application without prejudice when the applicant fails to tender a substantive response to the City within one hundred and eighty (180) calendar days after the City deems the application incomplete in a written notice to the applicant. In the event the application is denied without prejudice as provided herein and the applicant seeks to pursue an application at the same location, the applicant shall be required to submit a new application and applicable fees.

- E. **Optional Pre-Approved Design Process.** The Optional Pre-Approved Design Process is a mechanism for applicants to receive pre-approval of a programmatic SWF design that deviates from the Design Standards but achieves an equal or better aesthetic concealment outcome.
1. The applicant must apply to the Director for review of any proposed Optional Pre-Approved Design.
 2. The City commits to review, and make a decision upon, a proposed Optional Pre-Approved Design in a timely fashion. The shot clocks adopted by FCC rule do not apply because this is an optional process.
 3. An applicant will be charged for the cost of review consistent with the One-Time Fee provisions of this chapter.
 4. Pre-Approved Designs shall accomplish the intended aesthetic concealment outcomes of the Design Standards for SWF in the right-of-way, and deviations from the requirements of the City Code shall be the minimum necessary to support SWF function.
 5. No Pre-Approved Designs shall result in a deployment that exceeds the size limitations for a SWF as defined in 47 C.F.R. 1.6002(l).
 6. Pre-Approved Designs will be appended to the Transportation Design Manual and may be used as an alternative to meeting the Design Standards required by paragraph 6.08.050.D of this chapter. Proposals must comply with all other application laws and regulations.
- F. **One-Time Fees.** Applicant shall be responsible for paying all costs associated with City review, processing and inspection as part of all SWF permit applications filed for the installation, modification, maintenance and removal of a SWF. The City shall track its time spent reviewing the Applicant application submittals and conducting inspections. The hourly rate for One-Time Fees shall be assessed and administered consistent with standard City practice and fee schedule(s) as currently adopted and subsequently amended or replaced.

6.08.070 Permits and Inspections

A. Permit Approvals.

1. Findings. All SWF Permits approved pursuant to this section shall be subject to the following findings by the Director:
 - a. The applicant has an executed RUA with the City;
 - b. The applicant has an executed Master License Agreement with the City if any component of the proposed SWF involves use of a City Pole;
 - c. Subject to post-installation inspection pursuant to paragraph 6.08.070.C to confirm compliance, the proposal meets the minimum requirements for SWFs in the right-of-way pursuant to paragraph 6.08.050.C; and
 - d. Subject to post-installation inspection pursuant to paragraph 6.08.070.C to confirm compliance, the proposal complies with the concealment requirements contained in this Chapter by:

- i. Utilizing an Pre-Approved Design appended to the Transportation Design Manual; or
 - ii. Complying with the Design Standards for SWF Co-locations in the right-of-way pursuant to 6.08.050.D.
 2. Decisions. Decisions on a SWF Permit request shall be in writing.
- B. Installation Timing.** Applicant shall complete installation and commence operation of its SWF no later than six (6) months after receipt of Governmental Approvals; provided this six (6) month period may be extended (i) automatically due to delays in installation of necessary fiber backhaul or electrical power, or (ii) upon written consent of the City; provided, however, in no event shall such extension exceed twelve (12) months beyond receipt of Government Approvals. Failure of the applicant to complete installation or commence operation of the applicable SWF as provided above shall permit City to terminate the SWF Permit upon thirty (30) days' notice to applicant unless within such thirty (30) day period, applicant either (i) completes installation or commences operation, or (ii) City consents in writing to extend the time within which applicant must complete installation and commence operation.
- C. Post Installation Inspection.**
1. Scheduling. Within twenty (20) business days of completing installation of a permitted SWF, the applicant shall call for a City inspection and provide post-installation certification of compliance with FCC RF emissions requirements if requested.
 2. Final. The City shall inspect the site to verify whether the SWF installation complies with the terms of the granted SWF Permit and shall notify the applicant of the results of the inspection. Installations found to be compliant with all terms of the SWF Permit may be activated and begin operation. Installations found not to be compliant with all terms of the SWF permit shall be modified to be compliant with the issued SWF Permit, and re-inspected to verify compliance. SWF installations may not be operated before installation compliance is verified by City inspection. No City inspection (or approval) shall relieve or supersede an applicant's obligation to comply with the terms of an issued SWF Permit.
 3. Grounds for Deactivation. If a SWF is found at any time not to be in compliance with the requirements of the applicable SWF Permit, the City may require the permit holder to cure the noncompliance or deactivate and remove the noncompliant SWF pursuant to the terms of BCC 1.18 (Civil Violations).
- C. As-Built Drawings.** The Permittee shall submit an as-built drawing within ninety (90) days after installation of a SWF on a City Pole. As-builts shall be in an electronic format acceptable to the City.
- D. No Waiver of Standing.** The City's grant of a SWF Permit does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small wireless facilities, or any modification to those FCC orders or rules.

6.08.080 Modifications

A. Limitation on Modifications. Applications for modifications to approved or pre-existing SWFs shall only be granted if the SWF will continue to comply with specific concealment elements and Design Standards intended to minimize visual impacts. No modification or eligible facilities request shall be granted to allow an enlargement that would exceed the size limitations for a SWF as defined in 47 C.F.R. 1.6002(l).

B. Eligible Facilities Requests. The Director shall approve a modification application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

1. That the application qualifies as an eligible facilities request;
2. That the proposed facility will comply with 6.08.080.A.; and
3. That the proposed facility will comply with all generally-applicable laws.

C. Supplemental Conditions. All permits for an eligible facility request granted pursuant to this section shall be subject to the following additional conditions, unless modified by the Director:

1. Permit subject to conditions of underlying permit. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
2. No extension of underlying approvals. The Director's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying Government Approval for the subject base station, and shall not extend the term for any underlying Government Approval and its term shall be coterminous with the underlying Government Approvals for the subject base station.
3. No waiver of standing. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

6.08.090 Removal

A. Removal of Abandoned SWFs.

1. The SWF owner shall provide the Director with copies of any notice of intent to cease operations that is provided to the FCC.
2. All SWFs shall be removed by the SWF owner within 90 days of the date it ceases to be operational.

B. Removal Upon Undergrounding. A SWF must be removed at no expense to the City if co-located on a city pole or utility pole that is subsequently undergrounded.