

ORDINANCE 1407

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON; ENACTING A NEW CHAPTER 12.22 SMALL WIRELESS FACILITY DEPLOYMENT AND FIXING A TIME WHEN THE SAME SHALL BE EFFECTIVE.

WHEREAS, the use of data by smart phones and other wireless devices has grown exponentially; and

WHEREAS, poles within the public rights-of-way have been identified by the FCC as a primary resource for the deployment of small wireless facilities which are intended to increase the density and accessibility of radio frequency signals employed by such devices; and

WHEREAS, the City Council deems it to be in the public interest to revise its franchising requirements to specifically deal with small wireless facilities to be located in the right-of-way in conjunction with the revising the zoning code; now therefore; and

WHEREAS, the FCC has adopted regulations that create presumptively reasonable time periods or review that will require the City to utilize Type I administrative review in order to comply with these timeframes.

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Title 12 is hereby amended by the addition of a new Chapter 12.22 Small Wireless Facility Deployment and enacted to read as follows:

Chapter 12.22 SMALL WIRELESS FACILITY DEPLOYMENT

- 12.22.010 Definitions.
- 12.22.020 Application process.
- 12.22.030 Small wireless permit application.
- 12.22.040 Review process.
- 12.22.050 Permit requirements.
- 12.22.060 Modifications to small wireless facilities.
- 12.22.070 Consolidated permit.
- 12.22.080 Application and review fee.
- 12.22.090 Other City costs.
- 12.22.100 Permit fee.

12.22.010 Definitions.

For the purpose of this Chapter, the following terms, phrases,

words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended or in Chapters 12.18 and 17.61 GHMC. Words not otherwise defined shall have their common and ordinary meaning:

- A. "Director" means the Public Works Director or his/her designee.
- B. "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.
- C. "Grantor" means the City of Gig Harbor acting through its City Council.
- D. "Light Pole" means a pole owned by the City and used primarily for lighting streets, parking areas, parks or pedestrian paths.
- E. "Master Use Permit" and/or "Franchise" is a contract by which a grantee is allowed to use City right-of-way for the purpose of carrying on the business in which it is generally engaged, including furnishing service to members of the public issued pursuant to Title 12 and approved by the Gig Harbor City Council.
- F. "Overhead facilities" means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.
- G. "Person" includes corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities, and individuals.
- H. "Public right-of-way" or "right-of-way" means land acquired or dedicated for public roads and streets but does not include:
 - 1. State highways;
 - 2. Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;

3. Structures, including poles and conduits, located within the right-of-way;
 4. Federally granted trust lands or forest board trust lands;
 5. Lands owned or managed by the state parks and recreation commission; or
 6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec 912 and related provisions of federal law that are not open for motor vehicle use.
- I. "Service provider": Is defined consistently with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.
- J. "Small wireless" and "small wireless facility" shall have the same meaning as a "small wireless facility" as set forth in 47 CFR 1.6002.
- K. "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 personal wireless service (whether on its own or comingled with other types of services).
- L. "Telecommunications facilities" means the plant, equipment and property including, but not limited to, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireline or wireless telecommunications service.
- M. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this Chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.
- N. "Traffic Signal Poles" means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers.

O. Utility Pole means a wooden pole designated and used primarily for the support of electrical wires, telephone wires or television cable.

P. "Washington Utilities and Transportation Commission" or "WUTC" means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services, and providers in the state of Washington to the extent prescribed by law.

Q. "Wireline" means services provided using a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

12.22.020 Application Process.

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 Gig Harbor 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 Director. Applicants are encouraged and expected to provide all related applications in one submittal, unless they have already obtained a franchise or other master permit authorizing use of the public right-of-way for small wireless deployment.

B. Application Process. The Director 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 below.

1. Franchise/Master Use Permit. The process typically begins with and depends upon approval of a franchise or Master Use Permit pursuant to Chapter 12.18 GHMC for the use of the public right-of-way to deploy small wireless facilities if any portion of the applicant's facilities are to be located in the right-of-way. The term "Master Use Permit" as used herein includes a franchise. A complete application for a master use permit is designated as Part

A. An applicant with a master use permit 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 master use permits are required by federal law to be competitively neutral, the City has established a master use permit 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 12.22.030.

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 or SEPA ordinances. Applicants for deployment of small wireless facilities in City Design Zones or for new poles shall comply with the requirements in Chapter 17.61 GHMC.

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 Director 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.

12.22.030 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 GPS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/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 trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction.
 3. Compliance with the aesthetic design and concealment requirements of Chapter 17.61 GHMC.
- 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 or structure 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. If the application is for a new or replacement light pole, then the applicant must provide a photometric analysis.
- D. 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.
- E. 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.

F. 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 18.04 GHMC. Further, any application proposing small wireless facilities in Shoreline Management Zones or in Critical Areas must indicate that the application is exempt or comply with the review processes in such codes. See Title 18, GHMC.

G. 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.

H. 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.

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

J. A traffic control plan as required by the Director.

K. 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.

L. Recognizing that small wireless facility technology is rapidly evolving, the Director 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.

12.22.040 Review Process.

A. Review. The following provisions relate to review of applications for a small wireless facility permit.

1. 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 standard adopted pursuant to Chapter 17.61 GHMC, except as provided in subsection B below.

2. Vertical clearance shall be reviewed by the Director to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-ways.

3. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, traffic warrants, City ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement pole or new pole must: be physically possible, cannot obstruct vehicular or pedestrian traffic or the clear zone, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

4. No equipment shall be operated so as to produce noise in violation of State law or City ordinance.

5. 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.

B. Development Services Department. Small wireless deployment in areas designated as Design Zones pursuant to Chapter 17.61.030 GHMC, as well as new non-City owned poles, or replacement poles deviating from the pole design standards

adopted pursuant to Chapter 17.61.040 GHMC, are subject to review as provided in that Chapter.

C. 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 GHMC 17.61.060 when the modification does not defeat the concealment elements of the small wireless facility.

D. 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 Chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

E. Final Decision. Any decision by the Director shall be final and not be subject to administrative appeals.

F. Public Comment. The City shall provide notice of a complete application for a small wireless facility permit on the City's website with a link to the application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. The City shall post meeting notices, if any for informational meetings on its website. These meetings are for the public's information and are neither hearings nor part of any land use appeal process.

G. Withdrawal. Any applicant may withdraw an application submitted 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 Director'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 Director's decision, there shall be no refund of all or any portion of such fee.

H. Supplemental Information. Failure of an applicant to provide additional information as requested by the Director within sixty (60) days of notice by the Director shall be deemed a denial of that application, unless an extension period has been approved by the Director.

12.22.050 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 Director. 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 an encroachment 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.

12.22.060 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 GHMC.

12.22.070 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 development services department. 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 Title 12 GHMC shall apply to all small wireless facility permits.

12.22.080 Application and review fee.

Any applicant for master use and consolidated permits pursuant to this Chapter shall pay an application and review fee or fee deposit in an amount as determined by the City Council and adopted by resolution. 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 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 Chapter.

12.22.090 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.

12.22.100 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 and adopted by resolution, or the actual costs incurred by the City in reviewing such permit application.

Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by a court 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 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.


PASSED by the Council and approved by the Mayor of the City of Gig Harbor,
this 14th day of January, 2019.

CITY OF GIG HARBOR



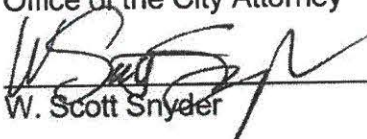
Kit Kuhn, Mayor

ATTEST AND AUTHENTICATED:



Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



W. Scott Snyder

FILED WITH THE CITY CLERK: 01/04/19
PASSED BY THE CITY COUNCIL: 01/14/19
PUBLISHED: 01/24/19
EFFECTIVE DATE: 01/29/18
ORDINANCE NO. 1407