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ORDINANCE NO. 782

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON ADOPTING AMENDMENTS TO SHORELINE MUNICIPAL CODE CHAPTER 20.40 FOR COMPLIANCE WITH THE SPECTRUM ACT AND FCC IMPLEMENTING RULES RELATED TO ELIGIBLE FACILITIES MODIFICATIONS.

WHEREAS, in 2012, the United States Congress passed the Middle Class Tax Relief and Jobs Creation Act ("Spectrum Act") setting forth provisions to expedite the availability of spectrum for commercial mobile broadband; and

WHEREAS, Section 6409(a) of the Spectrum Act imposed substantive and procedural limitations on local government authority to regulate modifications to existing wireless antenna support structures and base stations; and

WHEREAS, to implement the Spectrum Act, the Federal Communications Commission (FCC) adopted rules, codified at 47 CFR §1.40001, which became effective in April 2015; and

WHEREAS, the FCC rules set forth the procedures for the review of applications for Eligible Facilities Modification; and

WHEREAS, the City's development regulations pertaining to wireless telecommunication facilities are set forth in Shoreline Municipal Code (SMC) 20.40.600 and do not address eligible facilities modifications; and

WHEREAS, a new section of the SMC will be added to SMC Chapter 20.40 to achieve compliance with the Spectrum Act and the FCC's implementing rules; and

WHEREAS, on July 6, 2017, the City of Shoreline Planning Commission held a study session and, on August 3, 2017, held a properly noticed public hearing on the proposed amendment so as to received public testimony; and

WHEREAS, at the conclusion of the public hearing the City of Shoreline Planning Commission voted to recommend approval of the proposed amendments as presented by staff; and

WHEREAS, the City Council has considered the entire public record, public comments, written and oral, and considered the proposed amendments at its regularly scheduled meetings on September 11, 2017 and September 26, 20

WHEREAS, the City Council has determined that the proposed amendments are consistent with the Growth Management Act and in accordance with the Comprehensive Plan, and meets the criteria set forth in SMC 20.30.350; and

WHEREAS, pursuant to RCW 36.70A.106, the City has provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the proposed amendments to SMC Chapter 20.40, and

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WHEREAS, the environmental impacts of the proposed amendments resulted in the issuance of a Determination of Non-Significance (DNS) on July 18, 2017; and

WHEREAS, the City provided public notice of the amendments and the public meetings and hearing as provided in SMC 20.30.070 and have provided adequate opportunities for public review and comment;

THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment to Chapter 20.40 Zoning and Use Provisions. A new section, Section 20.40.605 *Wireless Telecommunication Facilities – Eligible Facilities Modification,* is added to Chapter 20.40 as set forth in Exhibit A to this Ordinance.

Section 2. Amendment to Section 20.40.600. SMC 20.40.600 *Wireless telecommunication facilities/satellite dish and antennas* is amended as set forth in Exhibit A to this Ordinance.

Section 3. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 4. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation.

Section 5. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON SEPTEMBER 25, 2017

Mayor Christopher Roberts

ATTEST:

Jessica Simulcik Smith
City Clerk

APPROVED AS TO FORM:

Margaret King
City Attorney

Date of Publication: September 28, 2017
Effective Date: October 3, 2017

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Amending SMC 20.40, adding a new section, SMC 20.40.605, for compliance with Spectrum Act and FCC Implementing Rules related to Eligible Facilities Modifications, and providing minor associated amendments to SMC 20.40.600(A) and .600(H) for clarification as to the applicable review process for these modifications.

SMC 20.40.600 Wireless telecommunication facilities/satellite dish and antennas.

A. Exemptions. The following are exemptions from the provisions of this chapter and shall be permitted in all zones.

1. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the Federal Communications Commission (FCC).
2. Machines and equipment that are designed and marketed as consumer products, such as microwave ovens and remote control toys.
3. The storage, shipment or display for sale of antenna(s) and related equipment.
4. Radar systems for military and civilian communication and navigation.
5. Handheld, mobile, marine and portable radio transmitters and/or receivers.
6. Wireless radio utilized for temporary emergency communications in the event of a disaster.
7. Licensed amateur (ham) radio stations and citizen band stations.
8. Earth station antenna(s) one meter or less in diameter and located in any zone.
9. Earth station antenna(s) two meters or less in diameter and located in the NB, CB, MB or TC-1, 2, or 3 zones.
10. Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when an accessory use of a property.
11. Maintenance or repair of a communication facility, antenna and related equipment, transmission structure, or transmission equipment enclosures; provided, that compliance with the standards of this chapter is maintained.
12. Subject to compliance with all other applicable standards of this chapter, a building permit application need not be filed for emergency repair or maintenance of a facility until 30 days after the completion of such emergency activity.
13. <u>A modification that has been determined to be an Eligible Facilities Modification pursuant to SMC 20.40.605.</u>

H. Modification. Excluding <u>modifications subject to SMC 20.40.605 and</u> "in-kind" replacements, modifications to existing sites, including the addition of new antennas to existing structures and building-mounted facilities, shall meet all requirements of this section.

1. Additions to existing facilities shall incorporate stealth techniques to limit visual impacts.
2. The antennas shall be counted as close to the pole as possible.
3. The diameter of the existing facility may not be increased by adding larger frames or arms.

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SMC 20.40.605 Wireless Telecommunication Facilities – Eligible Facilities Modifications

A. Terms used in this section shall have the following meanings. If a term is not expressly defined in this section than the definitions contained in chapter 20.20 SMC or its usual meaning shall apply. Where the same term is also defined in chapter 20.20 SMC, the definitions below shall control for the application of this chapter.

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 in this subpart or any equipment associated with a tower. The term *base station* includes, but is not limited to:

   a. Equipment associated with wireless communications services such as private, broadcast, and public safety 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 and small-cell networks).

   c. Any structure other than a tower that, at the time the relevant application is filed with City under this section, supports or houses equipment described in paragraphs (A)(1)(a) and (A)(1)(b) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another government regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

   d. The term does not include any structure that, at the time the relevant application is filed with the City under this section, does not support or house equipment described in paragraphs (A)(1)(a)-(b) of this section.

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 communications purposes.

3. *Eligible facilities modification application.* Any request for modification of an existing eligible support structure 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.

4. *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 under this section.

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5. *Existing.* A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another government 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.

6. *FCC.* The Federal Communications Commission.

7. *Site.* For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

8. *Spectrum Act.* Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 USC 1455.

9. *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 ten percent (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, including towers within the public rights-of-way, it increases the height of the structure by more than ten percent (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, including towers within the public rights-of-ways, 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 ten percent (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

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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 in 20.40.605(A)(9)(a)-(d).

g. For the purpose of this section, changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

10. *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.

11. *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.

B. Review of applications.

1. Documentation requirement for review. As provided for in SMC 20.30.100(C), the Director shall specify submittal requirements for a complete eligible facilities modification application. The applicant shall provide the required documentation, along with the applicable application fee, so as to ensure that the City has all information and documentation that is reasonably necessary to determine if the applicant's proposed facilities modification will substantially change the physical dimensions of an eligible support structure. The applicant will not be required to provide documentation of a needs analysis or other justification for the modification.

2. Timeframe for review. Within 60 days of the date of submittal of an eligible facilities modification application filed with the City under this section, less any time period excluded under (B)(3) of this section, the City shall approve the application unless it determines that the application is not covered by this section.

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3. Tolling of the timeframe for review. The 60-day period begins to run when an eligible facilities modification application is filed, and may be tolled only by mutual agreement or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

    a. To toll the timeframe for incompleteness, the City will provide written notice to the applicant within 30 days of receipt of the eligible facilities modification application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (B)(1) of this section.

    b. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

    c. Following a supplemental submission, the City will have ten days to notify the applicant 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 paragraph (B)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

4. Approval of an eligible facilities modification applications does not relieve the applicant of compliance with any other applicable building, structural, electrical, and safety regulations and with other laws codifying objective standards reasonably related to health and safety, including but not limited to those set forth in chapter SMC 15.05 Construction and Building Codes and SMC 20.40.600.

5. Denial of an eligible facilities modification application. An eligible facilities modification application shall be denied upon a determination by the City that the proposed facilities modification is not subject to this section or will substantially change the physical dimensions of an eligible support structure. The City will notify the applicant in writing of the basis for the denial.

6. Failure to act. In the event the City fails to approve or deny a request seeking approval of an eligible facilities modification application under this section within the timeframe for review (accounting for any tolling), the application shall be deemed granted. The deemed grant does not become effective until the applicant

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notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

C. Appeals

1. Notwithstanding any other provision of Title 20, no administrative appeal is provided for review of a decision to condition, deny, or approve an eligible facilities modification application. Any appeals must be brought pursuant to the Land Use Petition Act, chapter 36.70C RCW. However, the City and the applicant retain all remedies provided for under the Spectrum Act and its implementing rules.