

ORDINANCE NO. 06-19

AN ORDINANCE of the City of Richland amending Richland Municipal Code Title 28 to add a new Chapter 28.14 entitled Small Cell Deployment - Franchise and Small Cell Facility Permits and establishing federally required review periods.

WHEREAS, the City of Richland has need, from time to time, to amend the Richland Municipal Code (RMC) to bring the code into alignment with state law and to eliminate or clarify ambiguity; and

WHEREAS, in an effort to maintain pace with advancements in technology, the City has need to adopt regulations surrounding deployment of small cell technology in the City's rights-of-way; and

WHEREAS, contemporaneous with the consideration of this ordinance, City Council enacted amendments to its zoning code located in Title 23 of the Richland Municipal Code in order to provide for the deployment of small cell facilities.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Title 28 of the Richland Municipal Code is hereby amended by the addition of a new Chapter 28.14 titled Small Cell Deployment - Franchise and Small Cell Facility Permits, which shall read as follows:

Chapter 28.14

SMALL CELL DEPLOYMENT - FRANCHISE AND SMALL CELL FACILITY PERMITS

Sections:

28.14.010 Overview.

28.14.015 Definitions.

28.14.020 Franchise and Small Cell Facility Permit Application.

28.14.030 Review Process for Small Cell Facility Permits.

28.14.040 Permit Requirements

28.14.050 Consolidated Permit.

28.14.060 Modifications to Small Cell Facilities.

28.14.070 Additional Review Procedures.

28.14.090 Expedited Review.

28.14.010 Overview.

A. In order to manage its right-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 while complying with the requirements of state and federal law, the City of Richland has adopted this process for the deployment of small cell technology. Service providers who seek to utilize the public right-of-way for small cell deployment in order to provide wireless communication, data transmission or other

related services to the citizens of the City must have a valid franchise to provide the specific service seeking to utilize the right-of-way, and a small cell facility permit to deploy the technology. Entities with franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall utilize the processes set forth in this chapter, including use of small cell facility permits to deploy their technology. The small cell facility permit process administers deployment under the franchise.

B. Nothing in this chapter revises or diminishes the rights and obligations of an existing franchise. An “existing franchise” is one that existed as of February 5, 2019.

C. See RMC 23.62.020 for additional definitions.

28.14.015 Definitions.

“Antenna” means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Chapter I, Subchapter A, Part 15. Examples of antennas include, but are not limited to:

A. Omnidirectional antenna. An omnidirectional antenna (also known as whip antenna) transmits and receives radio frequency signals in a 360-degree radial pattern. For the purpose of this chapter, an omnidirectional antenna is up to fifteen (15) feet in height and four (4) inches in diameter.

B. Directional antenna. A directional antenna (also known as panel antenna) transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.

C. Parabolic antenna, A parabolic antenna (also known as dish antenna) is a bowl-shaped device for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.

D. Antenna Array. An antenna array is two or more devices used for the transmission or reception of radio frequency signals, microwave, or other signals for commercial communications purposes.

“Design Zone” is defined as described in RMC 23.62.030.

“Light Pole” means a pole used primarily for lighting streets, parking areas, parks or pedestrian paths.

“Small cell facility” has the same meaning as a “small wireless facility” defined in 47 CFR 1.6002.

“Structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or is to be used for the provision of personal wireless

service (whether on its own or comingled with other types of services).

“Traffic Signal Pole” 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.

“Utility Pole” shall mean a pole designated and used primarily for the support of electrical wires, telephone wires, or television cable.

28.14.020 Franchise and Small Cell Facility Permit Applications.

A. Applicants shall apply using the City’s franchise application form and submit a fee deposit commensurate with the estimated administrative costs of processing an application for a franchise. The fee deposit level shall be set by the Director of Public Works (“Director”). At its discretion, the applicant may designate the entire city or any portion thereof as the franchise boundary. Phased development is permitted, and an applicant shall specify at least the initial small cell deployment in its application.

B. Pre-application conference. A pre-application conference is encouraged prior to submitting an application for a franchise or for a small cell facility permit. The purpose of a pre-application meeting is to discuss the nature of the proposed deployment of telecommunications facilities, and to review applicable plans, policies and regulations. Process and schedule will also be addressed. Absent the submission of a small cell facility permit application at the time of the conference, the pre-application conference does not constitute the official start of the review process.

C. Small cell facility permits. The following information shall be provided by all applicants for small cell facility permits. Issuance of a small cell facility permit to install a small cell network shall be contingent upon approval of a franchise or the possession of a valid franchise. An applicant may apply for a small cell facility permit in parallel to obtaining a franchise; however, no small cell facility permit will be effective until a fully-executed franchise becomes effective as determined by Article III, Section 3.05 of the Richland City Charter.

1. The application shall provide specific locational information of all facilities, and specify whether and where small cell facilities are to be located on existing poles, or will utilize replacement poles, new poles, towers, existing buildings, and/or other structures. Conduit and fiber 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 cell facilities shall be provided by the applicant. If the site location includes a replacement light pole, then the applicant must submit a photometric analysis of the roadway and sidewalk 150 feet upstream and downstream of the existing light. Lighting levels are subject to approval of the City Engineer and must meet current City standards.

2. The applicant must show written approval of the owner of any pole or structure for the installation of its small cell facilities on such pole or structure. Such written approval shall include approval of the specific pole’s engineering, including assurances that the specific

pole can withstand wind and seismic loads. For City-owned poles or structures, the applicant must obtain a master lease agreement from the City, and submit a partially-executed site agreement or addendum specific to each proposed pole location on a form prepared by the City.

3. The applicant may submit multiple sites in one (1) small cell facility permit application for processing at the same time. The applicant is encouraged to batch small cell facilities in a single application within a contiguous service area and with similar pole types and designs.

4. Any element of a deployment which qualifies as an eligible facilities request shall be specifically designated by the applicant.

5. The Public Works Director may approve, deny, or conditionally approve all or any portion of the sites proposed in the small cell facility permit application. Denial of one or more small cell facility locations within a submission described in subsection (3) above shall not be the sole basis for denial of other locations or applicant's entire application for small cell facilities.

6. Any application for a small cell facility permit that contains an element which is not exempt from review under SEPA (Chapter 22.09), Shoreline Management (Title 26), or the Critical Areas Ordinance (Chapter 22.10) shall simultaneously apply under the applicable RMC.

7. The applicant shall submit a sworn affidavit, signed by an appropriately licensed professional with experience in RF emissions and with knowledge of the proposed project, affirming that the small cell deployment will be compliant with all FCC and other governmental regulations related to human exposure to radio frequency emissions for every frequency at which the small cell facility will operate. If facilities necessary to the small cell facility are to be provided by a third party, the small cell facility permit shall be conditioned on an RF Certification showing the cumulative impact of the RF emissions on the entire installation. The applicant may provide one emissions report for the entire small cell deployment if the applicant is using the same small cell facility configuration for all installations within that batch, or may submit one emissions report for each subgroup installation identified in the batch.

8. 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.

9. 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 cell facility.

10. The application must contain a copy of the contractor's and all subcontractors' state licensing and bonding compliance and current City of Richland business licenses and insurance requirements as listed in Title 12.08 RMC.

11. Such other information as the Director deems appropriate, so long as the required information is identified and published in advance by the City.

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

E. Supplemental Information. Failure of an applicant to provide additional information 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.

28.14.030 Review Process for Small Cell Facility Permits.

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

1. In any zone, upon application for a small cell facility permit, the City will permit small cell deployment on existing or replacement utility or light poles conforming to the City's generally applicable development and design standard adopted pursuant to Chapter 23.62 RMC, except as provided in subsection B below.

2. Vertical clearance shall be demonstrated by means of a design stamped by a Washington-licensed professional engineer attesting to adequate clearances to ensure that the small cell facilities will not pose a hazard to other users of the right-of-ways.

3. Replacement poles, new poles, and ground-mounted equipment shall comply with the Americans with Disabilities Act (ADA), City construction standards, and city, state, and federal regulations in order to provide a clear and safe passage within the right-of-way.

4. No equipment shall be operated so as to produce noise in violation of RMC 23.62.070(B).

5. Small cell facilities may not encroach onto or over private property or property outside of the right-of-way without the property owner's express written consent.

6. If a light pole exists within 150 feet of a wooden pole, the applicant shall utilize the light pole unless the applicant can demonstrate, to the satisfaction of the Director, that the light pole has been evaluated and is not possible for either technical feasibility or aesthetic reasons; provided, however, that this requirement shall not apply if the light pole is located in a Design Zone, as designated in Chapter 23.62 RMC, and the wooden pole is located

outside of the Design Zone.

B. Development Services Department. Small cell deployment in Design Zones, as well as new non-City-owned poles or replacement poles deviating from the pole design standards adopted pursuant to Chapter 23.62 RMC, are subject to review pursuant to RMC 23.62.030.

C. Eligible Facilities Requests. The design approved in a small cell facility permit shall be considered concealment elements and such facilities may only be expanded upon an Eligible Facilities Request described in RMC 23.62.110 when the modification does not defeat the concealment elements of the small cell 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 small cell 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 cell 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. Any decision by the Director shall be final and not subject to administrative appeal.

28.14.040. Permit Requirements

A. Post-Construction As-Builts. Within thirty (30) days after construction of the small cell facility, the permittee shall provide the City with as-builts and site photographs of the small cell facility demonstrating compliance with the permit.

B. Permit Time Limit. Construction of the small cell facility must be completed within six (6) months after the approval date by the City. The permittee may request one (1) extension to be limited to three (3) months, if the applicant cannot construct the small cell facility within the original six (6) month period. Failure to complete construction as required by this section shall result in expiration of the permit.

C. Site Safety and Maintenance. The permittee must maintain the small cell facilities in a safe and working condition. The permittee shall be responsible for removal of any graffiti or other vandalism, and shall keep the site neat and orderly at all times, including but not limited to the time period immediately following maintenance or modifications on the site.

D. Interference - WSDOT. If the small cell facility is located near Interstate 182, State Route 240 or State Route 224 corridors, then the permittee must complete cooperative testing with the Washington State Department of Transportation (WSDOT) to determine if there are interference problems with WSDOT equipment. If such interference problems exist, permittee must remediate such interference problems. If such remediation methods require modification to the small cell facility design, location, or RF emissions, permittee must apply with the City for an amendment to its small cell facility permit.

E. Interference with City Infrastructure. The small cell facility shall not physically or technically interfere with City-owned or operated traffic signals or telemetry. If such interference problems exist, permittee must remediate such interference problems. If such remediation methods require modification to the small cell facility design, location, or RF emissions, permittee must apply for an amendment to its small cell facility permit.

F. Additional Permit Requirements. The permittee must comply with such additional permit requirements as directed by the Director which are of general applicability for usage of the right-of-way.

28.14.050 Consolidated Permit

A. The issuance of a small cell facility permit grants authority to construct small cell facilities in the public right-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both Public Works and Development Services. As an exercise of police powers pursuant to RCW 35.99.040(2), the small cell facility permit is not a right-of-way construction permit, but instead a consolidated public works and land use permit. Issuance of a small cell facility permit shall be governed by the time limits established by federal law for wireless communications facilities.

B. The small cell facility permit shall include those elements that are typically contained in the right-of-way construction permit to allow the applicant to proceed with build-out of its small cell deployment.

C. The general standards applicable to the use of the right-of-way described in Chapter 12.08 RMC and within this Title 28 RMC shall apply to all small cell facility permits.

28.14.060 Modifications to Small Cell Facilities

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

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

28.14.070 Additional Review Procedures.

Small cell facilities in Shoreline Management Zones or Critical Areas are subject to review as provided in Chapter 22.10 RMC (Critical Areas Ordinance) and Title 26 RMC, Shoreline Management.

Section 2. This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

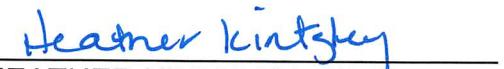
PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 5th day of February, 2019.


ROBERT J. THOMPSON
Mayor

ATTEST:


MARCIA HOPKINS, City Clerk

APPROVED AS TO FORM:


HEATHER KINTZLEY, City Attorney

Date Published: February 10, 2019