



# City of Tukwila

Washington

Ordinance No. 2652

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; AMENDING ORDINANCE NOS. 2498 §2 AND 2135 §1 (PART), AS CODIFIED AT TUKWILA MUNICIPAL CODE (TMC) SECTION 18.58.030, "EXEMPTIONS," TO EXEMPT SMALL WIRELESS FACILITIES FROM TMC CHAPTER 18.58, "WIRELESS COMMUNICATION FACILITIES"; ADOPTING A NEW TMC TITLE 23, "SMALL WIRELESS COMMUNICATION FACILITIES," AUTHORIZING AND ESTABLISHING PERMITTING REGULATIONS AND AESTHETIC AND DESIGN STANDARDS FOR THE DEPLOYMENT OF SMALL WIRELESS FACILITIES; ESTABLISHING 6 MONTHS AS THE EFFECTIVE PERIOD; HOLDING A PUBLIC HEARING ON THE INTERIM REGULATIONS; ADOPTING SUPPORTIVE FINDINGS; PROVIDING FOR SEVERABILITY; DECLARING A PUBLIC EMERGENCY AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.**

**WHEREAS**, in a constantly evolving industry, telecommunications providers are beginning to utilize a new type of technology commonly known as "small cell" facilities (herein "small wireless facilities") to implement higher bandwidths and increased demands for data; and

**WHEREAS**, the Federal Communications Commission ("FCC") has issued rules and regulations which limit local government's ability to regulate the deployment of small wireless facilities, but which allow local governments to adopt regulations affecting the aesthetics and design standards for small wireless facilities; and

**WHEREAS**, the FCC allows the City to adopt aesthetic standards for deployment of small wireless facilities that will require utilization of a consolidated process emphasizing administrative review in order to comply with federal safe harbors or presumptively reasonable time limits for review; and

**WHEREAS**, the City Council finds that the existence of federal regulations requiring the enactment of administrative procedures and processes which can comply with the new presumptive federal safe harbors need to be in place immediately in order to comply with such requirements; and

**WHEREAS**, the potential conflict between City land use review timelines and the preemptive federal shot clocks creates a time sensitive emergency; and

**WHEREAS**, the City is authorized by state law, including RCW 36.70A.390 and RCW 35A.63.220, to expeditiously adopt interim zoning ordinances while permanent regulations are developed, vetted and processed through the City's standard legislative procedures; and

**WHEREAS**, the City Council may adopt interim regulations for a period of up to six months so long as the City Council holds a public hearing on the interim regulations as required by RCW 35A.63.220 within 60 days of adoption of the interim regulations. A duly-noticed public hearing on this interim zoning ordinance was held on April 12, 2021 to solicit and receive public comment on this interim zoning ordinance; and

**WHEREAS**, pursuant to Washington Administrative Code (WAC) 197-11-880, the adoption of this interim zoning ordinance is exempt from the requirements of a threshold determination under the Washington State Environmental Policy Act (SEPA). A SEPA Checklist will be prepared, and a determination will be issued for the proposed final regulations; and

**WHEREAS**, the City Council finds that the use of the interim zoning ordinance will allow the City to implement an interim process to develop the necessary processes and procedures for small wireless facilities while providing a meaningful opportunity for citizens to provide input regarding design, concealment and other aesthetic standards within the longer time frame permitted by use of an interim zoning ordinance; and

**WHEREAS**, the City Council finds that an emergency exists and immediate adoption of interim zoning regulations as set forth herein for up to six months is necessary for the immediate preservation of the public peace, property, health or safety;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** The purpose of this ordinance is to establish interim permitting and aesthetic requirements and revisions to the Tukwila Municipal Code in response to the enactment of regulations by the FCC for a period of six months, or until such earlier time as permanent regulations may be adopted.

**Section 2. Findings of Fact.** The Tukwila City Council hereby adopts and incorporates the recitals set forth above as Findings of Fact justifying the interim development regulations adopted by this ordinance pursuant to the requirements of RCW 35A.63.220. The City Council also finds this ordinance necessary in order to address the possibility of processing an application for small wireless facilities in the City within the presumptive safe harbor review periods proscribed by the FCC. As such, a public emergency exists requiring that this ordinance take effect immediately upon passage.

**Section 3. Tukwila Municipal Code (TMC) Section 18.58.030 Amended.** Ordinance Nos. 2498 §2 and 2135 §1 (part), as codified at TMC Section 18.58.030, "Exemptions," is hereby amended by adding the following subparagraph 18.58.030(10):

**18.58.030 Exemptions**

10. Small wireless facilities as defined by TMC Section 23.04.030.

**Section 4. New Regulations Established.** The Tukwila Municipal Code is hereby amended by the addition of a new Title 23, "Small Wireless Communication Facilities," to read as follows:

**TITLE 23**

**SMALL WIRELESS COMMUNICATION FACILITIES**

**Chapter 23.04 – Small Wireless Facility Regulations**

**Sections:**

- 23.04.010 Purpose and Scope
- 23.04.020 Exemptions
- 23.04.030 Definitions
- 23.04.040 Federal regulatory requirements
- 23.04.050 Small wireless facility application process
- 23.04.060 Small wireless facility application requirements
- 23.04.070 Small wireless facility review criteria and process
- 23.04.080 Small wireless facility permit requirements
- 23.04.090 Small wireless facility modification
- 23.04.100 Small wireless facility aesthetic, concealment, and design standards
- 23.04.110 Removal of abandoned small wireless facility
- 23.04.120 Revocation of permit

**Section 5.** TMC Section 23.04.010 is hereby established to read as follows:

**23.04.010 Purpose and Scope**

A. The purpose of this chapter, in addition to implementing the general purposes of the Comprehensive Plan and development regulations, is to regulate the activities of permitting, placement, construction and modification of small wireless facilities in order to protect the health, safety and welfare of the public while not unreasonably interfering with the development of a competitive wireless telecommunications marketplace within the City.

B. This chapter provides permitting and review regulations as well as aesthetic, design and concealment standards for the construction of small wireless facilities both inside and outside of the public right-of-way. It also provides siting options at appropriate locations within the City to support existing communications technologies, to adapt to new technologies as needed, and to minimize associated safety hazards and visual impacts. The siting of small wireless facilities on existing buildings and structures, collocation of facilities on a single support structure and visual mitigation strategies are encouraged to preserve neighborhood aesthetics and reduce visual clutter in the City.

**Section 6.** TMC Section 23.04.020 is hereby established to read as follows:

### **23.04.020 Exemptions**

The following facilities are exempt from the provisions of this chapter and shall be permitted consistent with the applicable development standards outlined in the Land Uses Table in TMC Chapter 18.09:

1. Wireless Communications Facilities (WCFs) used for temporary emergency communications in the event of a disaster, or emergency preparedness, and for any other public health or safety purpose, including, by way of illustration and not limitation, any communications systems utilized by first responders such as police or fire.
2. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.
3. Citizen band radios or antennas operated by federal licensing amateur (“ham”) radio operators.
4. Satellite dish antennas less than two meters in diameter, including direct-to-home satellite services, when used as secondary use of the property.
5. Automated meter reading (“AMR”) facilities for collecting utility meter data for use in the sale of utility services, except for WIP and other antennas greater than two feet in length, so long as the AMR facilities are within the scope of activities permitted under a valid franchise agreement between the utility service provider and the city.
6. Eligible facilities requests. See TMC Section 18.58.200.

**Section 7.** TMC Section 23.04.030 is hereby established to read as follows:

### **23.04.030 Definitions**

For the purposes of this chapter, the following terms shall have the meaning ascribed to them below.

1. **“Antenna(s)”** in the context of small wireless facilities and consistent with 47 CFR 1.1320(w) and 1.6002(b) 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 and any commingled

information services. For the purposes of this definition, the term “antenna” does not include an unintentional radiator, mobile station, or device authorized by 47 CFR Title 15.

2. **“Antenna equipment,”** consistent with 47 CFR 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and when collocated on a structure, are mounted or installed at the same time as the antenna.

3. **“Applicant”** means any person submitting an application for a small wireless facility permit pursuant to this Chapter.

4. **“Collocation”** means:

a. Mounting or installing antenna equipment on a preexisting structure;  
and/or

b. Modifying a structure for the purpose of mounting or installing antenna equipment on that structure.

5. **“Director”** means the Public Works Director or designee.

6. **“Equipment enclosure”** means a facility, shelter, cabinet, or vault used to house and protect electronic or other associated equipment necessary for processing wireless communication signals. “Associated equipment” may include, for example, air conditioning, backup power supplies, and emergency generators.

7. **“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.

8. **“Permittee”** means a person who has applied for and received a small wireless facility permit pursuant to this chapter.

9. **“Personal wireless services”** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

10. **“Person”** includes corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities, and individuals.

11. **“Public right-of-way”** or **“right-of-way”** means land acquired or dedicated for public roads and streets but does not include:

- a. State highways;
- b. Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;
- c. Structures, including poles and conduits, located within the right-of-way;
- d. Federally granted trust lands or forest board trust lands;

e. Lands owned or managed by the state parks and recreation commission; or

f. Federally granted railroad rights-of-way acquired under 43 U.S.C. 912 and related provisions of federal law that are not open for motor vehicle use.

12. **“Service provider”** shall be defined in accord with RCW 35.99.010(6). “Service provider” shall include those infrastructure companies that provide telecommunications services or equipment to enable the construction of wireless communications.

13. **“Small wireless facility”** shall be defined as provided in 47 CFR 1.6002(l).

14. **“Stealth Technique”** means stealth techniques specifically designated as such at the time of the original approval of the small wireless facility for the purposes of rendering the appearance of the small wireless facility as something fundamentally different than a small wireless facility including but not limited to the use of nonreflective materials, appropriate colors, and/or a concealment canister.

15. **“Structure”** means a pole, tower, base station, or other building, whether or not it has an existing antenna equipment, that is used or to be used for the provision of personal wireless service (on its own or commingled with other types of services).

16. **“Telecommunications service”** shall be defined in accord with RCW 35.99.010(7).

17. **“Tower”** means 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 communication 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.

18. **“Traffic signal pole”** means any structure designed and used primarily for support of traffic signal displays and equipment, whether for vehicular or nonmotorized users.

19. **“Transmission equipment”** means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communication 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.

20. **“Unified enclosure”** means a small wireless facility providing concealment of antennas and equipment within a single enclosure.

21. **“Utility pole”** means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, or lighting for streets, parking lots, or pedestrian paths.

22. **“Wireless communications facilities”** or **“WCF”** means facilities used for personal wireless services.

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

**Section 8.** TMC Section 23.04.040 is hereby established to read as follows:

#### **23.04.040 Federal regulatory requirements**

A. These provisions shall be interpreted and applied in order to comply with the provisions of federal law. By way of illustration and not limitation, any small wireless facility that has been certified as compliant with all FCC and other government regulations regarding the human exposure to radio frequency emissions will not be denied on the basis of RF radiation concerns.

B. Small wireless facilities shall be subject to the requirements of this Code to the extent that such requirements:

1. Do not unreasonably discriminate among providers of functionally equivalent services; and
2. Do not prohibit or have the effect of prohibiting wireless service within the City.

**Section 9.** TMC Section 23.04.050 is hereby established to read as follows:

#### **23.04.050 Small wireless facility application process**

A. **Applicability.** Any application for a small wireless facility both inside and outside of the public right-of-way shall comply with the application requirements for a small wireless facility permit described in this chapter. For small wireless facilities inside the right-of-way, the applicant must also comply with the requirements pursuant to TMC Chapter 11.32.

B. **Completeness.** An application for a small wireless facility is not complete until the applicant has submitted all the applicable items required by TMC Section 23.04.060 and, to the extent relevant, has submitted all the applicable items in TMC Section 23.04.050.C and the City has confirmed that the application is complete. Franchisees with a valid franchise for small wireless facilities may apply for a small wireless permit for the initial or additional phases of a small wireless facilities deployment at any time subject to the commencement of a new completeness review time period for permit processing.

C. **Application Components.** The Director is authorized to establish franchise and other application forms to gather the information required from applicants to evaluate the application and to determine the completeness of the application as provided herein. The application shall include the following components as applicable:

1. **Franchise.** If any portion of the applicant's facilities are to be located in the right-of-way, the applicant shall apply for, and receive approval of a franchise, consistent with the requirements in TMC Chapter 11.32. An application for a franchise may be submitted concurrently with an application for small wireless facility permit(s).

2. **Small Wireless Facility Permit.** The applicant shall submit a small wireless facility permit application as required in the small wireless facility application requirements established in TMC Section 23.04.060 and pay the applicable permit fee as set forth in the fee schedule adopted by resolution of the City Council and which may be amended by the City Council from time to time.

3. **Associated Application(s) and Checklist(s).** Any application for a small wireless permit which contains an element not categorically exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and TMC Title 21. Further, any application proposing small wireless facilities in a shoreline area (pursuant to TMC Chapter 18.44) or an environmentally sensitive area (pursuant to TMC Chapter 18.45) shall indicate why the application is exempt or comply with the review processes in such codes. Applications for small wireless facilities for new poles shall comply with the requirements in TMC Section 23.04.100.E.

4. **Leases.** An applicant who desires to attach a small wireless facility on any utility pole, light pole, or other structure or building owned by the City shall obtain a lease as a component of its application. Utility poles and the use of other public property, structures or facilities including, but not limited to any park land or facility, require City Council approval of a lease or master lease agreement.

**Section 10.** TMC Section 23.04.060 is hereby established to read as follows:

### **23.04.060 Small wireless facility application requirements**

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

A. The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, towers, existing buildings and/or other structures. The applicant shall specify ground-mounted equipment, conduit, junction boxes and fiber and power connections necessary for and intended for use in the small wireless facilities system regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. The applicant shall provide detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards. The application shall have sufficient detail to identify:



1. The location of overhead and, to the extent applicable, underground public utilities, telecommunication, cable, water, adjacent lighting, sewer drainage and other lines and equipment within 50 feet of the proposed project area (which the project area shall include the location of the fiber source and power source). Further, the applicant shall include all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, street trees and structures within 50 feet of the proposed project area.

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 significant landscaping to be disturbed during construction. The applicant is discouraged from cutting/pruning, removing or replacing trees, and if any such tree modifications are proposed the applicant must comply with applicable provisions of TMC Chapter 11.20.

3 The applicant's plan for fiber and power service, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small cell facility, to the extent to which the applicant is responsible for installing such fiber and power service, conduits, cables, and related improvements. Where another party is responsible for installing such fiber and power service, conduits, cables, and related improvements, applicant's construction drawings shall include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain power and fiber service to the small cell facility.

4. A photometric analysis of the roadway and sidewalk within 150 feet of the existing light if the site location includes a new or replacement light pole.

5. Compliance with the applicable aesthetic requirements pursuant to TMC Section 23.04.100.

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 specifications for the pole, as well as assurances that the specific pole can withstand wind and seismic loads as well as assurances in accordance with TMC Section 23.04.060.F, from the pole owner, unless the pole owner is the City. For City-owned poles or structures, the applicant shall obtain a lease from the City prior to or concurrent with the small wireless facility permit application so the City can evaluate the use of a specific pole.

C. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area and/or with similar designs.

D. The applicant shall submit a sworn affidavit signed by a Radio Frequency (RF) engineer with knowledge of the proposed project affirming that the small wireless facility 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 that 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 from the entire installation. The applicant may provide one emissions report for the entire batch of small wireless facility applications 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.

E. The applicant shall provide proof of FCC or other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

F. A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that construction plans of the small wireless facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads as required by applicable codes.

G. A right-of-way use permit application as required by TMC Section 11.08.010.

H. Proof of a valid City of Tukwila business license.

I. Recognizing that small wireless facility technology is rapidly evolving, the Director is authorized to adopt and publish standards for the structural safety of City-owned poles and structures, and to formulate and publish application questions for use when an applicant seeks to attach to City-owned poles and structures.

J. Such other information as the Director, in his/her reasonable discretion, shall deem appropriate to effectively evaluate the application based on technical, engineering and aesthetic considerations.

**Section 11.** TMC Section 23.04.070 is hereby established to read as follows:

**23.04.070 Small wireless facility review criteria and process.**

A. The following provisions relate to the 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 facilities only when the application meets the criteria of TMC Chapter 23.04.

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

3. Replacement poles, new poles, and ground-mounted equipment shall only be permitted pursuant to the applicable standards in TMC Section 23.04.100.

4. No equipment shall be operated so as to produce noise in violation of TMC Chapter 8.22.

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 pursuant to TMC Section 23.04.100.A.1.

**B. Decision.** All small wireless facility applications shall be reviewed and approved or denied by the Director. The Director's decision shall be final and is not subject to appeal under City code or further review by the City.

**C. Eligible Facilities Requests.** Small wireless facilities may be expanded pursuant to an eligible facility request so long as the expansion:

1. does not defeat the specifically designated stealth techniques; and
2. incorporates the aesthetic elements required as conditions of approval set forth in the original small wireless facility approval in a manner consistent with the rights granted an eligible facility; and
3. does not exceed the conditions of a small wireless facility as defined by 47 CFR 1.6002(l).

**D. Public Notice.** The City shall provide notice of a complete application for a small wireless permit on the City's website with a link to the application. Prior to construction, the applicant shall provide notice of construction to all impacted property owners within 100 feet of any proposed small wireless facility via a doorhanger that shall include an email contact and telephone number for the applicant. Notice is for the public's information and is not a part of a hearing or part of the land use appeal process.

**E. 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 reduced to withhold the amount of actual and objectively reasonable 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.

**F. Supplemental Information.** Failure of an applicant to provide supplemental information as requested by the Director within 60 days of notice by the Director shall be grounds for denial of that application unless an extension period has been approved by the Director. If no extension period has been approved by the Director, the Director shall notify the applicant in writing that the application is denied.

**G. Consolidated Permit.** The issuance of a small wireless permit grants authority to construct small wireless facilities in the rights-of-way in a consolidated manner to allow the applicant, in most situations, to avoid the need to seek duplicative approval by both the Public Works and the Community Development departments. 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. The general standards applicable to the use of the rights-of-way described in TMC Chapter 11.08 shall apply to all small wireless facility permits.

**Section 12.** TMC Section 23.04.080 is hereby established to read as follows:

**23.04.080 Small wireless facility permit requirements.**

**A. Permit Compliance.** The permittee shall comply with all of the requirements within the small wireless facility permit.

**B. Post-Construction As-Builts.** Upon request, the permittee shall provide the City with as-builts of the small wireless facilities within 30 days after construction of the small wireless facility, demonstrating compliance with the permit, visual renderings submitted with the permit application and any site photographs taken.

**C. Construction Time Limit.** Construction of the small wireless facility must be completed within 12 months after the approval date by the City. The permittee may request one extension of no more than six months, if the permittee provides an explanation as to why the small wireless facility cannot be constructed within the original 12-month period.

**D. Site Safety and Maintenance.** The permittee must maintain the small wireless facilities in safe and working condition. The permittee shall be responsible for the removal of any graffiti or other vandalism of the small wireless facility and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

**E. Operational Activity.** The permittee shall commence operation of the small wireless facility no later than six months after installation. The permittee may request one extension for an additional six-month period if the permittee can show that such operational activity is delayed due to inability to connect to electrical or backhaul facilities.

**Section 13.** TMC Section 23.04.090 is hereby established to read as follows:

**23.04.090 Small wireless facility modification**

**A.** If a permittee desires to modify their small wireless facilities, 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 stealth techniques, then the permittee shall apply for a new small wireless permit.

B. A small wireless 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 stealth techniques used in the original small wireless facility and does not impact the structural integrity of the pole. Further, a small wireless permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small wireless facilities. An annual blanket right-of-way permit will be required for such routine maintenance, repair, or replacement and can cover all facilities owned by the applicant.

**Section 14.** TMC Section 23.04.100 is hereby established to read as follows:

**23.04.100 Small wireless facility aesthetic, concealment, and design standards**

A. All small wireless facilities shall conform with the following general aesthetic, concealment, and design standards, as applicable:

1. Except for locations in the right-of-way, small wireless facilities are prohibited on any property containing a residential use in a residential zone; provided that where small wireless facilities are intended to be located more than 400 feet from a right-of-way and within an access easement over residential property, the location may be allowed if:

a. the applicant affirms they have received an access easement from the property owner to locate the facility in the desired location; and

b. the property owner where the facility will be installed has authority to grant such permission to locate the facility and related equipment at the designated location pursuant to the terms of the access easement; and

c. the installation is allowed by, and consistent with, the access easement; and

d. such installation will not frustrate the purpose of the easement or create any access or safety issue; and

e. the location is in compliance with all land use regulations such as, but not limited to, setback requirements.

2. In the event power is later undergrounded in an area where small wireless facilities are located above ground on utility poles, the small wireless facilities shall be removed and may be replaced with a facility meeting the design standards for new poles in TMC Section 23.04.100.E.

3. Ground-mounted equipment in the rights-of-way is prohibited, unless such facilities are placed underground, or the applicant can demonstrate that pole-mounted or undergrounded equipment is technically infeasible. If ground-mounted equipment is necessary, then the applicant shall submit a stealth technique plan substantially conforming to the applicable standards in TMC Section 23.04.100.E.3 and comply with the Americans with Disabilities Act ("ADA"), City construction standards, and state and

federal regulations in order to provide a clear and safe passage within the public rights-of-way. Generators located in the rights-of-way are prohibited.

4. No signage, message, or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than four by six inches); provided, that signs may be permitted as stealth techniques technique where appropriate and safety signage as required by applicable laws, regulations, and standards is permitted.

5. Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of the stealth techniques requirements pursuant to TMC Section 23.04.100.E.3.

6. The design standards in this chapter are intended to be used solely for the purpose of concealment and siting. Nothing contained in this chapter shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would render the small wireless facility technically infeasible or otherwise have the effect of prohibiting wireless service, alternative forms of aesthetic design or concealment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

**B. General Pole Standards.** In addition to complying with the applicable general standards in TMC Section 23.04.100.A, all small wireless facilities on any type of utility pole shall conform to the following general pole design requirements as well as the applicable pole specific standards:

1. The preferred location of a small wireless facility on a pole is the location with the least visible impact.

2. The City may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall neither be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.

3. Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC 253 and 332.

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

5. Replacement poles shall be located as near as possible to the existing pole, but in no event further than five feet from the existing pole, and the existing pole shall be removed.

6. Side arm mounts for antennas or equipment must be the minimum extension necessary, and for wooden poles may be no more than 12 inches off the pole, and for nonwooden poles no more than six inches off the pole.

7. The use of the pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

**C. Nonwooden Pole Design Standards.** In addition to complying with the applicable general standards in TMC Section 23.04.100.A and TMC Section 23.04.100.B, small wireless facilities attached to existing or replacement nonwooden poles in side or outside the right-of-way shall conform to the following design criteria:

1. Upon adoption of a City standard small wireless facility pole design(s) within the City's Infrastructure Design and Construction Standards, an applicant shall first consider using or modifying the standard pole design to accommodate its small wireless facility without substantially changing the outward visual and aesthetic character of the design. The applicant, upon a showing that use or modification of the standard pole design is either technically or physically infeasible, or that the modified pole design will not comply with the City's ADA or sidewalk clearance requirements and/or would violate electrical or other safety standards, may deviate from the adopted standard pole design and use the design standards as described in this TMC Section 23.04.100.C., subsections 2 through 8.

2. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is technically infeasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush-mounted to the pole, meaning no more than six inches off of the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole; provided, that such location does not interfere with the operation of the banners or signs, or the small wireless facility.

*For purposes of this section, "incompatible with the pole design" may include a demonstration by the applicant that the visual impact to the pole or the streetscape would be reduced by placing the antennas and equipment exterior to the pole.*

3. The farthest point of any antenna or equipment enclosure may not extend more than 28 inches from the face of the pole.

4. All conduit, cables, wires, and fiber must be routed internally in the pole. Full concealment of all conduit, cables, wires, and fiber is required within mounting brackets, shrouds, canisters, or sleeves if attaching to exterior antennas or equipment.

5. An antenna on top of an existing pole may not extend more than 6 feet above the height of the existing pole and the diameter may not exceed 16 inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that they appear as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas, which shall not require screening. To the extent technically feasible, all cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.

6. Any replacement pole shall substantially conform to the design of the pole it is replacing (including but not limited to color, shape and style) or the neighboring pole design standards utilized within the contiguous right-of-way.

7. The height of any replacement pole and antenna(s) may not extend more than 10 feet above the height of the existing pole or the minimum additional height necessary; provided, that the height of the replacement pole cannot be extended further by additional antenna height.

8. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25 percent increase of the existing pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole.

**D. Wooden Pole Design Standards.** In addition to complying with the applicable general standards in TMC Section 23.04.100.A and TMC Section 23.04.100.B, small wireless facilities attached to existing or replacement wooden utility poles and other wooden poles inside or outside the right-of-way shall conform to the following design criteria:

1. The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that is a maximum of 10 feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.

2. A pole extender may be used instead of replacing an existing pole, but may not increase the height of the existing pole by more than 10 feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or



clearance from electrical and wireline facilities. A “pole extender” as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

3. Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City.

4. The diameter of a replacement pole shall comply with the City’s setback and sidewalk clearance requirements and shall not be more than a 25 percent increase of the existing utility pole measured at the base of the pole or the otherwise standard size used by the pole owner.

5. All cables and wires shall be routed through conduits along the outside of the pole. The outside conduit shall be colored or painted to match the pole. The number of conduits shall be minimized to the number technically necessary to accommodate the small wireless facility.

6. Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.

7. Antennas shall not be mounted more than 12 inches from the surface of the wooden pole.

8. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole; provided, that each antenna shall not be more than three cubic feet in volume.

9. A canister antenna may be mounted on top of an existing or replacement wooden pole, which may not exceed the height requirements described in TMC Section 23.04.100.D.1. A canister antenna mounted on the top of a wooden pole shall not exceed 16 inches in diameter, measured at the top of the pole and, to the extent technically feasible, shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may install a side-mounted canister antenna, so long as the inside edge of the antenna is no more than 12 inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.

10. The farthest point of any antenna or equipment enclosure may not extend more than 28 inches from the face of the pole.

11. An omnidirectional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

12. All related antenna equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles, shall not be mounted more than six inches from the surface of the pole, unless a further distance is technically required and is confirmed in writing by the pole owner.

13. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to TMC Section 23.04.100.A.3. The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna, and any preexisting associated equipment on the pole, may not exceed 28 cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and do not cumulatively exceed 28 cubic feet. The applicant is encouraged to place the equipment enclosure(s) behind any banners or road signs that may be on the pole; provided, that such location does not interfere with the operation of the banners or signs, or the small wireless facility.

14. An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so; provided, that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any preexisting associated equipment on the pole, do not exceed 28 cubic feet. The unified enclosure may not be placed more than six inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs; provided, that such location does not interfere with the operation of the banners or signs.

**E. Standards for small wireless facilities on new poles in the rights-of-way.** In addition to complying with the applicable general standards in TMC Section 23.04.100.A and TMC Section 23.04.100.B, small wireless facilities proposed to be attached to new poles shall comply with following:

1. New poles within the rights-of-way are only permitted if the applicant can establish that:

a. The proposed small wireless facility cannot be located on an existing utility pole, electrical transmission tower, or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower or in or on a nonresidential use in a residential zone, whether by roof or panel mount or separate structure; and

b. The proposed small wireless facility receives approval for a stealth technique design, as described in TMC Section 23.04.100.E.3; and

c. The proposed small wireless facility also complies with the Shoreline Management Act, Growth Management Act, and State Environmental Policy Act, if applicable; and

d. No new poles shall be located in a critical area or associated buffer required by the City's Environmentally Sensitive Areas ordinance, TMC Chapter 18.45, except when determined to be exempt pursuant to said ordinance.

2. An application for a new pole is subject to administrative review by the Director.

3. All new poles shall conform to the City's standard pole design adopted in the City's Infrastructure Design and Construction Standards. If no existing metered service is available, the applicant shall provide new metered electrical service. If the City's standard pole design is technically infeasible, the new pole shall meet the following:

a. The stealth technique design shall include the design of the screening, fencing, or other concealment technology for the pole, equipment enclosure, and all related transmission equipment or facilities associated with the proposed small wireless facility, including but not limited to fiber and power connections.

b. The stealth technique design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure should have similar designs to existing neighboring poles in the rights-of-way, including similar height to the extent technically feasible. If the proposed small wireless facility is placed on a replacement pole in a design district, then the replacement pole shall be of the same general design as the pole it is replacing, unless the Director otherwise approves a variation due to aesthetic or safety concerns. Any stealth technique design for a small wireless facility on a decorative pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the decorative pole. Other stealth technique methods include, but are not limited to, integrating the installation with architectural features or building design components; utilization of coverings or concealment devices of similar material, color, and texture—or the appearance thereof—as the surface against which the installation will be seen or on which it will be installed; landscape design; or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wires are installed internally within the structure. Further, applicant designs should, to the extent technically feasible, comply with the generally applicable design standards adopted pursuant to TMC Section 23.04.100.A and TMC Section 23.100.B.

c. If the Director has already approved a stealth technique design either for the applicant or another small wireless facility along the same public right-of-way or for the same pole type, then the applicant shall utilize a substantially similar stealth technique design, unless it can show that such stealth technique design is not technically feasible, or that such design would undermine the generally applicable design standards adopted pursuant to TMC Section 23.04.100.A and TMC Section 23.100.B.

d. Even if an alternative location is established pursuant to TMC Section 23.04.100.E.1.a, the Director may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the stealth technique design, the City's Comprehensive Plan and the added benefits to the community.

e. Prior to the issuance of a permit to construct a new pole or ground-mounted equipment in the right-of-way, the applicant must obtain a master lease agreement from the City to locate such new pole or ground-mounted equipment. This requirement also applies to replacement poles that are taller than the replaced pole, when the overall height of the replacement pole and the proposed small wireless facility is more than 60 feet.

**F. Standards for small wireless facilities attached to cables.** In addition to complying with the applicable general standards in TMC Section 23.04.100.A, all small wireless facilities mounted on existing cables strung between existing utility poles shall conform to the following standards:

1. Each strand-mounted facility shall not exceed three cubic feet in volume;
2. Only one strand-mounted facility is permitted per cable between any two existing poles on an existing cable;
3. The strand-mounted devices shall be placed as close as feasible to the nearest utility pole, in no event more than five feet from the pole unless that location is technically infeasible or is not allowed by the pole owner for safety clearance;
4. No strand-mounted device shall be located in or above the portion of the roadway open to vehicular traffic;
5. Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in preexisting equipment cabinets or required by a third party electrical service provider; and
6. Pole-mounted equipment shall comply with the requirements of TMC Section 23.04.100.A and TMC Section 23.04.100.B.
7. Such strand-mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).

**G. Standards for small wireless facilities attached to existing buildings.** In addition to complying with the applicable general standards in TMC Section 23.04.100.A, all small wireless facilities attached to existing buildings shall conform to the following design criteria:

1. Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.
2. The interruption of architectural lines or horizontal or vertical reveals is discouraged.
3. New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.

4. Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.

5. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.

6. To the extent technically feasible, small wireless facilities shall be painted and textured to match the adjacent building surfaces.

**Section 15.** TMC Section 23.04.110 is hereby established to read as follows:

#### **23.04.110 Removal of abandoned small wireless facility**

Any small wireless facility that, after the initial operation of the facility, is not used for the purpose for which it was intended at the time of filing of the application for a continuous period of 12 months shall be considered abandoned, and the owner of such facility shall remove same within 90 days of receipt of notice from the City notifying the owner of such abandonment. Failure to remove such abandoned facility shall result in the City declaring the facility a public nuisance. If there are two or more users of a single pole or structure, then this section shall not become effective until all users cease using the tower.

**Section 16.** TMC Section 23.04.120 is hereby established to read as follows:

#### **23.04.120 Revocation of permit**

A permit issued under this chapter may be revoked, suspended or denied for any one or more of the following reasons:

1. Failure to comply with any federal, state, or local laws or regulations.
2. Failure to comply with the terms and conditions imposed by the City on the issuance of a permit.
3. When the permit was procured by fraud, false representation, or omission of material facts.
4. Failure to comply with federal standards for RF emissions.

**Section 17. Public Hearing.** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on April 12, 2021 at 7:00 p.m. in order to take public testimony concerning the interim ordinance.

**Section 18. Duration of Interim Controls.** This interim ordinance shall be in effect for six months, commencing on April 12, 2021, unless renewed or unless a final ordinance is adopted amending the Tukwila Municipal Code and rescinding the interim controls.

**Section 19. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/ subsection numbering.

**Section 20. Severability.** This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

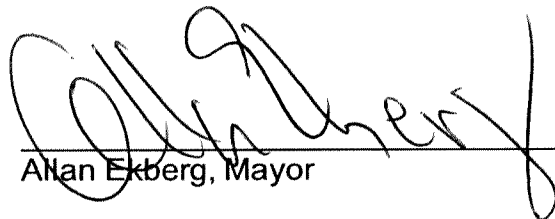
**Section 21. Declaration of Emergency; Effective Date; Sunset.** Based upon the findings set forth above, the City Council hereby declares a public emergency requiring this ordinance to take effect immediately, upon its passage by a majority plus one of the whole membership of the City Council. This ordinance shall accordingly be in full force and effect immediately upon passage and shall remain effective for a period of six months unless terminated earlier or subsequently extended by the City Council. PROVIDED, that the City Council may, in its sole discretion, renew the interim zoning regulations set forth herein for one or more six month periods in accordance with state law. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Special Meeting thereof this 12<sup>th</sup> day of April, 2021.

ATTEST/AUTHENTICATED:

eSigned via BeamlineDocs.com  
*Christy O'Flaherty*  
Key: d0396aca043bd473702ae17a0b7ed185

Christy O'Flaherty, MMC, City Clerk



Alan Ekberg, Mayor

APPROVED AS TO FORM BY:

eSigned via BeamlineDocs.com  
*Kari L. Sand*  
Key: 034e43765a502eb9059880cafa40b1

Office of the City Attorney

Filed with the City Clerk: 4-7-21  
Passed by the City Council: 4-12-21  
Published: 4-15-21  
Effective Date: Per Section 21  
Ordinance Number: 2652

City of Tukwila Public Notice of Ordinance Adoption for Ordinance 2652.

On April 12, 2021 the City Council of the City of Tukwila, Washington, adopted the following ordinance, the main points of which are summarized by title as follows:

**Ordinance 2652:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; AMENDING ORDINANCE NOS. 2498 §2 AND 2135 §1 (PART), AS CODIFIED AT TUKWILA MUNICIPAL CODE (TMC) SECTION 18.58.030, "EXEMPTIONS," TO EXEMPT SMALL WIRELESS FACILITIES FROM TMC CHAPTER 18.58, "WIRELESS COMMUNICATION FACILITIES"; ADOPTING A NEW TMC TITLE 23, "SMALL WIRELESS COMMUNICATION FACILITIES," AUTHORIZING AND ESTABLISHING PERMITTING REGULATIONS AND AESTHETIC AND DESIGN STANDARDS FOR THE DEPLOYMENT OF SMALL WIRELESS FACILITIES; ESTABLISHING 6 MONTHS AS THE EFFECTIVE PERIOD; HOLDING A PUBLIC HEARING ON THE INTERIM REGULATIONS; ADOPTING SUPPORTIVE FINDINGS; PROVIDING FOR SEVERABILITY; DECLARING A PUBLIC EMERGENCY AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

The full text of this ordinance will be provided upon request.

Christy O'Flaherty, MMC, City Clerk

Published Seattle Times: April 15, 2021