

**TOWN OF YARROW POINT
ORDINANCE NO. 694**

AN ORDINANCE OF THE TOWN OF YARROW POINT AMENDING YARROW POINT MUNICIPAL CODE CHAPTER 17.30 IN ITS ENTIRETY WITH REGARD TO COMMUNICATIONS FACILITIES AND SMALL WIRELESS FACILITY DEPLOYMENTS AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Chapter 17.30 as amended provides review procedures along with application requirements applicable to the installation of wireless communications within the Town; and

WHEREAS, contemporaneous with the consideration of this ordinance, Town Council enacted amendments to its franchise provisions located in Chapter 13.04 in order to provide for the deployment of small wireless facilities; and

WHEREAS, Town Council acknowledges that the growing use of smart phones and other personal wireless devices creates a substantial need for wireless data transmission, and therefore deems it in the public interest to adopt code that will allow the Town to comply with federal guidelines by integrating necessary provisions into the zoning code for the review and management of such deployments; and

WHEREAS, general design standards are necessary to maintain the aesthetic environment of the Town's streetscape and accommodate evolving technology; and

WHEREAS, adoption of the contemporaneous franchise revisions requires integration with the Town's zoning code in order to provide for design guidelines and processes to be used when considering applications for eligible facilities requests and small wireless deployment; and

WHEREAS, the Planning Commission met to discuss this topic at three different meetings and held a public hearing on the proposed changes to Chapter 17.30 as well as Chapter 13.04 on January 7, 2019 after such public hearing was properly noticed according to law; and

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, environmental review was done on the proposed amendments and a Determination of Nonsignificance (DNS) was issued on December 11, 2018 for these amendments, and required notice to the State of Washington was sent on December 11, 2018; and

WHEREAS, the comment period and appeal period for the DNS expired on December 26, 2018; and

WHEREAS, after consideration from testimony taken at the public hearing, the Planning Commission recommends approval of the proposed changes to Chapter 17.30; and

WHEREAS, the Town administration concurs with the Planning Commission recommendation to approve the proposed changes to Chapter 17.30.

NOW, THEREFORE, BE IT ORDAINED by the Town of Yarrow Point as follows:

Section 1. Recitals Incorporated. The Recitals set forth above are hereby adopted and incorporated as Findings of Fact and/or Conclusions of Law of the Town Council. The Town Council bases its findings and conclusions on the entire record of testimony and exhibits, including all written and oral testimony before the Planning Commission and the City Council.

Section 2. The Yarrow Point Municipal Code, Chapter 17.30, is hereby amended in its entirety as follows:

17.30 Communication Facilities

17.30.010 Purpose.

The purpose of this chapter is to set forth the regulations for the placement, development, permitting, and removal of macro and small wireless facilities. Among the purposes included are to:

- A. Minimize potential adverse visual, aesthetic, and safety impacts of wireless facilities.
- B. Establish objective standards for the placement of wireless facilities.
- C. Ensure that such standards allow competition and do not unreasonably discriminate among providers of functionally equivalent services.
- D. Encourage the design of such wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.
- E. Encourage the location or attachment of multiple wireless facilities within or on existing support structures to help minimize the total number and impact of such structures throughout the community.
- F. Protect the residential aesthetic of the Town.

17.30.020 Definitions.

See Chapter 13.04 YPMC for additional definitions for terms utilized in this Chapter.

- A. "Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, utility pole, building or other structure for the purpose of providing wireless services.
- B. "Co-location" means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Provided that, for purposes of Eligible Facilities Requests,

“collocation” means 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.

C. “Macro facility” means is a large wireless communication facility that provides radio frequency coverage for a wireless communication service. Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cell facilities typically contain antennas that are greater than three cubic feet per antenna and typically cover large geographic areas with relatively high capacity and may be capable of hosting multiple wireless service providers.

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

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

F. “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 communications services included, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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

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

17.30.030 General provisions.

A. Small wireless facilities shall not be considered nor regulated as essential public facilities.

B. Small wireless facilities located outside of the public rights-of-way may be either a primary or a secondary use.

C. Small wireless facilities located within the public right-of-way pursuant to a valid franchise are out right permitted uses in every zone of the Town but still require a permit pursuant to 17.30.140 below.

D. The following are exempt from the provisions of this chapter and shall be allowed outright within the town, without a special-use permit for wireless communication facilities:

1. Wireless radio utilized for temporary emergency communications in the event of a disaster;
2. Routine maintenance or repair of a wireless communication facility.

ARTICLE I. SITING MACRO FACILITIES.

17.30.040 Macro site selection criteria.

A. Any applicant proposing to place a macro facility, construct a macro facility support structure, equipment building and antenna tower, or mount an antenna on an existing macro facility, shall demonstrate by engineering evidence that the macro facility, including support systems, must be located on the site to satisfy its function in the applicant's local grid system. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.

B. Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider, or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the wireless communication system.

C. Location and design of macro facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact to such neighborhood, including but not limited to trees, views, scale of structures in the surrounding area, and the height of the proposed structure.

17.30.050 Allowable locations for macro facilities.

Macro facilities, including antenna tower, support structures and equipment buildings, shall only be allowed on public property at the following locations:

- A. Public rights-of-way, except 92nd Ave NE and where the town, in its discretion, determines that all service facilities and utilities shall be undergrounded.
- B. Public buildings and property.
- C. Public parks.

17.30.060 Siting macro facilities on public property and public rights-of-way.

A. The following minimum requirements apply to the placement of macro facilities on public property and public rights-of-way:

1. The facilities will not interfere with the purposes for which the town-owned property or rights-of-way are intended;

2. The facilities will be located no closer than 70 feet from the nearest private property line measured horizontally at ground level;
3. The applicant shall obtain liability insurance in an amount not less than \$1,000,000;
4. The applicant will submit a letter of credit, performance bond, or other security acceptable to the town to cover the costs of removing the facilities;
5. The macro facility, including support systems, will not interfere with other uses;
6. The applicant must agree that in case of a declared emergency or documented threat to public health, safety or welfare and following reasonable notice, the town may require the applicant to remove the facilities at the applicant's expense;
7. The applicant must obtain all necessary land use approvals;
8. The applicant must cooperate with the town's objective to locate multiple antennas and associated equipment on a single macro facility;
9. The applicant must remove the facility in the event that it is abandoned or there is no current site lease; and
10. The facility must be constructed in such a manner as to provide a stealth appearance.

B. Special Requirements for Parks. The use of town-owned parks for macro facilities, including support systems, brings with it special concerns due to the unique nature of these sites. The placement of macro facilities in a park will be allowed only when, in addition to the requirements of subsection A of this section, the applicant demonstrates the following:

1. The proposed location has not been designated as a critical area, and the macro facility is not within 150 feet of a critical area;
2. The macro facility will not interfere with normal public use or impact existing vistas;
3. The macro facility is constructed in such a manner as to provide a stealth appearance and is consistent with the existing flora and fauna of the park.

17.30.070 Application requirements for macro facilities.

The applicant for a macro facility shall obtain a special-use permit for the installation and operation of the macro facility. An application for a special-use permit for installing a macro facility shall consist of the following:

- A. Photosimulations of the proposed facility from surrounding areas of not less than 300 feet in all directions;
- B. A site elevation and landscaping plan indicating the specific placement of the macro

facility, including support systems, on the site, the location of existing structures, trees and other significant site features, the type and location of plant materials to be used to screen the facility, and the proposed color(s) of the facility;

- C. Copies of any environmental documents required by any federal agency;
- D. A site plan clearly indicating the location, type and height of the proposed antenna tower, antenna support structure, and equipment buildings, including but not limited to all stealth features;
- E. A current map showing the locations and service areas of other macro facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the town, including the capacity of the proposed site to extend that service area beyond that which is covered already from an existing macro facility;
- F. The legal description of the parcel;
- G. The method of fencing, finished color and, if applicable, the method of camouflage;
- H. A statement by the applicant that the construction of the proposed antenna tower, antenna support structure, and equipment buildings shall accommodate additional facilities or antennas for future users;
- I. A complete SEPA checklist and any supplemental environmental studies required by the town;
- J. Engineering evidence demonstrating that the macro facility, including support systems, must be located on the proposed site to satisfy its function in the applicant's local grid system.

17.30.080 Design criteria for macro facilities.

Approval of all special-use permits for macro facilities shall be based on the following design criteria:

- A. New macro facilities shall be designed to accommodate the location of additional antennas and associated equipment unless the applicant demonstrates why such design is not feasible for technical or physical reasons.
- B. Architectural Compatibility. Macro facilities shall be architecturally compatible with the surrounding buildings and land uses in the town, and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the site.
- C. Setbacks. All macro facilities shall comply with the minimum setback requirements of the Yarrow Point Zoning Code. A variance shall be required to vary from the minimum setback requirements.
- D. View Corridors. Consideration shall be given to the placement of antenna towers, antenna support structures and equipment buildings such that said facilities do not obstruct

current existing views.

E. Lights, Signals and Signs. No signals, lights or signs shall be permitted on any macro facilities, including antenna towers, antenna support structure, and equipment buildings.

F. Equipment Structures. All ground-level equipment, equipment buildings and antenna support structures shall be placed underground unless the applicant can, by sound engineering studies, demonstrate that undergrounding is not feasible. In the event an applicant demonstrates that ground-level equipment, equipment buildings, and antenna support structures cannot be placed underground, then the following standards shall apply:

1. The maximum finished area occupied by the structure shall be 100 square feet and the maximum structure height shall be six (6) feet. The equipment building may be located no more than 50 feet from the antenna or facility.
2. Ground-level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means.
4. Equipment buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

G. Federal Requirements. All antennas and antenna support structures must meet or exceed all federal regulations.

H. Building Codes, Safety Standards. To ensure the structural integrity of towers, antennas, antenna support structures and facilities, the applicant/owner shall ensure that they are maintained in compliance with standards contained in the applicable town building codes and the applicable standards for antenna support structures published by the Electronic Industry Association (EIA) as amended from time to time. If, upon application for a building permit or inspection, the town concludes that an antenna support structure fails to comply with such codes and standards and constitutes a danger to persons or property, then upon written notice provided to the owner by the town, the owner shall have 30 days to bring the antenna support structure into compliance with such standards. If the owner fails to bring the antenna support structure into compliance within 30 days, the town may remove the antenna support structure at the owner's expense.

I. Structural Design. Antenna support structures shall be constructed to EIA standards, which may be amended from time to time, and to all applicable codes adopted by the town. Further, any improvements or additions to existing antenna support structures shall require submission of site plans stamped by a professional engineer which demonstrate compliance with the EIA standards and all other good industry practices. The plans shall be submitted and reviewed at the time applications for building permits are submitted.

J. A wooden fence not more than six (6) feet in height from the finished grade shall be provided around each macro facility. Access to the facility shall be through a locked gate.

K. Height of Antenna and Antenna Support Structure. No antenna, antenna support structure or mount shall exceed 45 feet in height from existing grade. Exceptions to this

requirement may be allowed only after the applicant obtains a variance.

17.30.090 Macro site landscaping requirements.

Approval of all special-use permits shall be based on the following landscaping requirements:

A. Landscaping, as described herein, shall be required to screen macro facilities as much as possible, to soften the appearance of the facility. The town may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If the antenna is mounted flush on an existing building, on top of a utility pole and/or other equipment, or is housed inside an existing structure, landscaping may not be required.

B. Screening. The visual impacts of a macro facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. Landscaping and buffering shall be required around the perimeter of the antenna and antenna support structure, except that the town may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

17.30.100 Non-use/Abandonment of macro site.

A. Abandonment. No less than 30 days prior to the date that a macro service provider plans to abandon or discontinue operation of a facility, the provider must notify the town by certified U.S. mail of the proposed date of abandonment or discontinuation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the town's discovery of discontinuation of operation. Upon such abandonment, the provider shall have 60 days (or additional period of time determined in the reasonable discretion of the town) within which to:

1. Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or
2. In the event that abandonment as defined herein occurs due to relocation of an antenna at a lower point on the antenna support structure, the operator shall have six months from the date of effective abandonment to collocate another service on the antenna and antenna support structure. If another service provider is not added to the antenna support structure, the operator shall promptly dismantle and remove that portion of the antenna support structure which exceeds the minimum height required to function satisfactorily. Notwithstanding the foregoing, changes made to wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment;
3. Dismantle and remove facility. If the tower, antenna, foundation, and facility are not removed within the 60-day time period or additional period of time allowed by the town, the town may remove the antenna, antenna support structure, foundation and related facility at the owner's/provider's expense. If there are two or more providers located on a facility, this provision shall not become effective until all providers cease using the facility,

except as otherwise provided herein.

B. At the earlier of 60 days from the date of abandonment without reactivating or upon completion of dismantling and removal, town approval for the facility shall automatically expire.

17.30.110 Special-use permit fee for macro facility application.

The applicant shall pay a fee for a special-use permit to install a macro facility. The fee shall be established by resolution of the town council and may be amended from time to time.

17.30.120 Processing macro facility applications.

A. The planning commission shall be vested with the authority by this chapter to determine at a public hearing whether to grant, grant with conditions, or deny an application for a special-use permit for the installation of a macro facility.

B. The planning commission shall be vested with the authority by this chapter to determine at a public hearing whether to grant, grant with conditions, or deny a variance. In addition to the requirements of YPMC 17.28.070(C) ("Variances"), the planning commission shall consider the following:

1. The impact of the facility on adjacent properties;
2. Alternative sites for macro facilities; and
3. The extent to which screening and camouflaging will mitigate the effect of the proposed macro facilities.

C. Macro facility special-use permit decisions made by the Planning Commission under subsection A above as well as decisions on variances made by the Planning Commission under subsection B above are final decisions appealable to the Hearing Examiner within 30 days of such decision. The timely filing of such appeal shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

17.30.130 Macro site lease.

Upon the granting of a special-use permit for a macro facility by the planning commission, the applicant shall enter into a lease with the town of Yarrow Point for the use of town property.

PART II. SITING SMALL WIRELESS FACILITIES.

17.30.140 Application requirements for small wireless facilities.

A. Any application for a small wireless facility both inside and outside of the right-of-way shall comply with the application requirements for a small wireless facility permit described in Chapter 13.04.560.

17.30.150 Design and concealment standards for small wireless deployments.

Small wireless facility deployments whether permitted in the right-of way under Chapter 13.04 YPMC or permitted in accordance with this chapter shall conform to the following design standards:

A. Small wireless facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right-of-way or non-wooden poles outside of the right-of-way shall conform to the following design criteria:

1. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise 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 (6) 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.
2. The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.
3. All conduit, cables, wires and fiber must be routed internally in the light 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.
4. An antenna on top of an existing pole may not extend more than the minimum necessary as supported by engineering evidence or in any event no more than ten (10) feet above the height of the existing pole and the diameter may not exceed sixteen (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 it appears 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. 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.
5. Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.
6. The height of any replacement pole may not extend more than ten (10) feet above the height of the existing pole or the minimum additional height necessary, provided no additional height is allowed for the antenna installation.

7. The diameter of a replacement pole shall comply with the Town's setback and sidewalk clearance requirements and shall, to the extent technically feasible, no larger than to accommodate three interior conduit or not more than a 25% increase of the existing non-wooden pole measured at the base of the pole, whichever is greater, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection E(4) below.

8. 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.

a. In the event that the pole serving as the host for a small wireless facility becomes unnecessary and the small wireless facility must be removed, the applicant shall first attempt to site the small wireless facility on a remaining utility pole and may install a new pole at that same location consistent with the requirements contained in subsection .160 below only if such other suitable location does not exist.

B. Wooden pole design standards. Small wireless facilities located on wooden poles 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 ten (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 ten (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 Town.

4. 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.

5. Panel antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.
6. 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 enclosure shall not be more than three (3) cubic feet in volume.
7. A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection B(1) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches, measured at the top of the pole, and 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 propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (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.
8. The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.
9. An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) 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.
10. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not have an inside edge within six (6) inches of the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.
11. Equipment for small wireless facilities must be attached to the wooden pole, unless otherwise permitted to be ground mounted pursuant to subsection (E)(1). 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 pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interference with the operation of the banners or signs.
12. 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 pre-existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. 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. The unified enclosure may not be placed more than six (6) 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, unified enclosure shall be placed so as to appear as an integrated part of the pole or behind any banners or signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

13. The visual effect of the small wireless facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.

14. The use of the wooden 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.

a. In the event that the pole serving as the host for a small wireless facility becomes unnecessary and the small wireless facility must be removed, the applicant shall first attempt to site the small wireless facility on a remaining utility pole and may install a new pole at that same location consistent with the requirements contained in subsection .160 below only if such other suitable location does not exist.

15. The diameter of a replacement pole shall comply with the Town's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing utility pole measured at the base of the pole.

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

C. 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. Small wireless facilities shall be painted and textured to match the adjacent building surfaces.

D. Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.

1. Each strand mounted facility shall not exceed three (3) cubic feet in volume;

2. Only one strand mounted facility is permitted per cable between any two existing poles;

3. The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance technically necessary or is required 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 pre-existing equipment cabinets; and

6. Pole mounted equipment shall comply with the requirements of subsections A and B above.

7. Such strand mounted devices must be installed to cause the least visual impact, be outside the view of a single-family residence, and without excess exterior cabling or wires (other than the original strand).

8. Strand mounted facilities are prohibited on non-wooden poles.

E. General requirements.

1. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed under ground 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 concealment element plan. Generators located in the rights of way are prohibited.

2. No equipment shall be operated so as to produce noise in violation of Chapter 8.04 YPMC.

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 (ADA), Town construction and sidewalk clearance standards, Town ordinance, 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 with the requirement to remove the abandoned pole.

6. 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 4x6 inches); provided that, signs are permitted as concealment element techniques where appropriate.

7. 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 a concealment element plan.

8. Side arm mounts for antennas or equipment must be the minimum extension necessary and for wooden poles the inside edge of the antenna or equipment may be no more than twelve (12) inches off the pole and for non-wooden poles no more than six (6) inches off the pole.

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

10. Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached.

11. Except for locations in the right-of-way or within access easements on private property with property owner permission, small wireless facilities are not permitted on any property containing a residential use in the residential zones.

12. The Town 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 Town. This provision shall not 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.

13. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

17.30.160 New poles in the rights-of-way or access easement for small wireless facilities.

A. New poles within the rights-of-way or in an access easement on private property with property owner permission are only permitted if the applicant can establish that:

1. The proposed small wireless facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights of way or access easement such as a public park, public property, or building.
2. The proposed small wireless facility receives approval for a concealment element design, as described in subsection 3 below;
3. For access easements, the property owner has given permission for the placement of a new pole within the access easement in such a manner so as to not frustrate the purpose of the easement or create any access or safety issue and shall be in compliance with all land use regulations such as, but not limited to, setback requirements;
4. The proposed small wireless facility also complies with Shoreline Management Act and SEPA, if applicable;
5. Any new pole shall be installed at the point closest to the side property line so as to not impact the property's view; and
6. No new poles shall be located in a critical area or associated buffer required by the Town's Critical Areas Regulations for Shoreline Jurisdiction.

B. The planning commission shall be vested with the authority by this chapter to determine at a public hearing whether to grant, grant with conditions, or deny an application for the siting of new poles for the installation of small wireless facilities.

C. The new pole shall generally conform with the designs included below. The exact pole design type (Option A and Option B) shall be determined by the Town based on the Town's need for light at the proposed location. Any new pole shall be installed at the sole expense of the applicant.

1. Option A shall be a light standard designed in conjunction with the Town representative to be compatible with the Town's existing light pole infrastructure and conforming to the Town's technical standards for such poles.
2. Option B shall be a hollow pole designed for small wireless facilities only generally conforming with the design shown in Figure 1 below.



Figure 1:

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

1. The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility. The proposed pole or structure shall conform to the pole design type designated by the Town for the proposed location. Any concealment element design for a small wireless facility on a new pole should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the pole. Other concealment 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 wirelines are installed internally in the structure. Further, applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to 17.30.150.

2. If the Town Representative has already approved a concealment element 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 concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.

E. Even if an alternative location is established pursuant to subsection .160(A)(1) the Town Representative may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the Town, the concealment element design, the Town's

Comprehensive Plan and the added benefits to the community.

F. 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 site-specific agreement from the Town to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement pole and the proposed small wireless facility is more than sixty (60) feet.

G. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections of the street scape.

H. A decision on an application for the siting of new poles for the installation of small wireless facilities made by the Planning Commission are final decisions appealable to the Hearing Examiner within 30 days of such decision. The timely filing of an appeal on a decision for an application for the siting of new poles shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

17.30.170 Eligible Facilities Request

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this section.

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 herein nor any equipment associated with a tower. Base Station includes, without limitation:

i. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small wireless networks).

iii. Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subparagraph (i) and (ii) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

iv. The term does not include any structure that, at the time the Eligible Facilities Request application is filed with the Town, does not support or house equipment

described in subparagraph (1)(a) and (1)(b) above.

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 communication purposes.
3. “Eligible Facilities Request”: Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - i. Collocation of new transmission equipment;
 - ii. Removal of transmission equipment; or
 - iii. 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 Town.
5. “Existing”: A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local 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. “Substantial Change”: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
 - i. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 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, it increases the height of the structure by more than 10% or more than ten (10) feet, whichever is greater;
 - ii. 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, 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;
 - iii. 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 10% larger in height

or overall volume than any other ground cabinets associated with the structure;

- iv. It entails any excavation or deployment outside the current site;
- v. It would defeat the concealment elements of the eligible support structure; or
- vi. 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 above.

7. “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.

8. “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.

B. Application. The Town Representative shall prepare and make publicly available an application form used to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

C. Qualification as an Eligible Facilities Request. Upon receipt of an application for a complete Eligible Facilities Request, the Town Representative shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

D. Timeframe for Review. Within sixty (60) days of the date on which an applicant submits a complete Eligible Facilities Request application, the Town Representative shall approve the application unless it determines that the application is not covered by YPMC 17.30.170.

E. Tolling of the Time Frame for Review. The sixty (60) day review period begins to run when the complete application is filed and may be tolled only by mutual agreement by the Town Representative and the applicant or in cases where the Town Representative determines that the application is incomplete. The timeframe for review of an Eligible Facilities Request is not tolled by a moratorium on the review of applications.

- 1. To toll the timeframe for incompleteness, the Town Representative shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.

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

3. Following a supplemental submission, the Town Representative will notify the applicant within ten (10) days 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 sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

F. **Determination That Application Is Not an Eligible Facilities Request.** If the Town Representative determines that the applicant's request does not qualify as an Eligible Facilities Request, the Town Representative shall deny the application.

G. **Failure to Act.** In the event the Town Representative fails to approve or deny a request for an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the Town Representative in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

17.30.180 Testing of small wireless facilities required.

A. Each permitted small wireless facility permit holder shall conduct annual tests, at the permit holder's expense, necessary to establish the level of radio frequency radiation created by the small wireless facility. The purpose of this testing is to ensure that the radio frequency radiation is in compliance with the FCC's regulations and standards.

B. The annual testing is in addition to the test required pursuant to YPMC 13.04.520(G). Thereafter, the permit holder shall test the small wireless facility every April to measure the radio frequency radiation created by the small wireless communication facilities to ensure compliance with the FCC's regulations and standards.

C. All such tests required by this section shall be performed by a licensed electrical engineer, or by a person with equivalent capabilities approved by the Town Engineer.

D. Copies of each and every radio frequency radiation test shall be submitted to the Town Engineer on the first day of the month following the month in which the test is performed. Such test results shall be certified by a licensed electrical engineer. No renewal of a permit or lease shall be granted unless the permit holder submits the test results to the Town prior to the Town's consideration of the renewal application.

E. If at any time the radio frequency radiation test shows that the radio frequency radiation emanating from the small wireless facility exceeds the standards established by the FCC, the permit holder shall immediately disconnect the small wireless facility and notify the Town Engineer. The small wireless facility shall not be reconnected until the permit holder

demonstrates that corrections have been completed to reduce the radio frequency radiation to levels permitted by the FCC

17.30.190 Appeals

Small wireless facility permit decisions made by the Town Representative are final decisions appealable to the Hearing Examiner within 30 days of such decision. However, decisions on requests for new poles for the siting of small wireless facilities, as outlined in 17.30.160, are determined by the Planning Commission at a public hearing. Such decisions on new poles are final and appealable to the Town Council within 30 days of such decision. The timely filing of an appeal of a wireless communication facility permit decision shall stay the effective date of the decision until such time as the appeal is concluded or withdrawn.

Section 3. Ordinance to be transmitted to Department. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington Department of Commerce as required by law.

Section 4. Corrections. The Town Clerk and codifiers of the ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 5. Severability. If any section, sentence, clause phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 6. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the Town and shall take effect and be in full force five (5) days after publication.

PASSED AND APPROVED Passed by the Town Council of the Town of Yarrow Point, the 8th day of January 2019. Approved by the Mayor of the Town of Yarrow Point, the 8th day of January 2019.

Richard Cahill, Mayor

ATTEST:

APPROVED AS TO FORM:

Bonnie Ritter, Clerk-Treasurer

Scott Missall, Town Attorney

FILED WITH THE TOWN CLERK:
PASSED BY THE TOWN COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.: 694

DRAFT