

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6755

AN ORDINANCE amending Chapter 6.08 of the Bellevue City Code (BCC) related to the permitting, deployment, and operation of Small Wireless Facilities (SWF) in the public rights-of-way; providing severability and establishing an effective date.

WHEREAS, in September 2018 the Federal Communications Commission (FCC) issued a declaratory ruling and third report and order (FCC 18-133) regarding municipal regulation of “small wireless facilities” (the FCC Order); and

WHEREAS, in order to comply with the FCC Order, the City adopted Ordinance No. 6454 which established a regulatory framework to process SWF permits and for SWF installation on city poles or utility poles in the ROW; and

WHEREAS, the City Council subsequently adopted Ordinance No. 6462 which established design requirements for strand mount SWF and SWF installed on purpose-built poles; and

WHEREAS, this ordinance further amends Chapter 6.08 BCC related to permitting, deployment, and operation of SWF in the public rights-of-way; and

WHEREAS, the proposed code amendments to Chapter 6.08 BCC are categorically exempt from the requirements of SEPA under WAC 197-11-800(19); now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 6.08.010 of the Bellevue City Code is hereby amended to read as follows:

6.08.010 Purpose.

The purpose of this chapter is to establish a process for managing, and uniform requirements for acting upon, requests for the deployment of small wireless facilities (SWFs) and for modifications, including eligible facilities requests to modify existing SWF, within the rights-of-way consistent with the city’s obligation to promote the public health, safety, and welfare, to manage the rights-of-way, and to ensure that the public is not incomed by the use of the rights-of-way for the placement deployment and modification of SWFs. The city recognizes the importance of

personal wireless services facilities to provide high-quality communications service to the residents and businesses within the city, and the city also recognizes its obligation to comply with applicable federal and state law regarding the deployment of SWFs in its rights-of-way. This chapter shall be interpreted consistent with those provisions.

Section 2. Section 6.08.020 of the Bellevue City Code is hereby amended to read as follows:

6.08.020 Applicability.

The provisions of this chapter regulate the deployment and design of SWF antennas, SWF equipment, and purpose-built poles in the city rights-of-way. The provisions of this chapter do not apply to wireless communication facilities or purpose-built poles outside the city rights-of-way; these are both regulated under the terms of the Land Use Code (refer to LUC 20.20.195).

Section 3. Section 6.08.030(A) of the Bellevue City Code is hereby amended to read as follows:

A. *General.* There shall be a type of city permit entitled a “small wireless facility permit” (SWF permit), which shall be subject to all the applicable requirements of this title. Unless exempted, every person who desires to co-locate a SWF on a city pole or utility pole or to install an SWF on or within a purpose-built pole within the right-of-way shall obtain a SWF permit authorizing the placement or modification in accordance with this chapter. There shall also be a type of city permit entitled a “small wireless facility eligible facilities request permit” (SWF EFR permit), which shall be subject to the applicable requirements of this title. Unless exempted, every person who desires to modify an existing SWF within the right-of-way that qualifies as an eligible facilities request (EFR) shall obtain a SWF EFR permit authorizing modification in accordance with this chapter. Except for SWFs and SWF EFRs permits, no other wireless communication facilities shall be permitted pursuant to this chapter.

Section 4. Section 6.08.030(B) of the Bellevue City Code is hereby amended to read as follows:

B. *Exemptions.* This chapter does not apply to:

1. The placement or modification of facilities by the city or by any other agency of the state solely for public health, welfare and safety purposes.
2. Installation of a “cell on wheels,” “cell on truck” or a similar structure for a temporary period in connection with an emergency, event, or redevelopment of an

existing wireless site but no longer than required for the emergency, event, or redevelopment; provided, that installation does not involve excavation, movement, or removal of existing facilities.

3. Deployment of a SWF on the strand between two utility poles; provided, that the cumulative volume of all SWF components located on the strand shall not exceed one cubic foot; and provided further, that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles or intensification in use of electrical power.

Section 5. Section 6.08.040(A) of the Bellevue City Code is hereby amended to read as follows:

A. *Authority.* It shall be the responsibility of the transportation director or their designee to administer the provisions of this chapter. As part of the administration of this chapter, the director is authorized to:

1. Administer and interpret the provisions of this chapter;
2. Develop and implement standards governing the deployment and modification of SWFs consistent with the requirements of this chapter, including regulations governing attachments and resolution of conflicting applications for deployment of SWFs;
3. Develop processes, procedures, agreements and forms for submission of applications for deployment or modification of SWFs, EFRs, or proposed changes to any city facilities consistent with this chapter;
4. Collect, as a condition of SWF permit or SWF EFR permit submittal and issuance, any one-time fee required by this chapter;
5. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
6. Issue any notices of incompleteness, requests for information, or conduct or commission such analysis or studies as may be required to determine whether a permit should be issued;
7. Determine whether to approve, approve subject to conditions, or deny an application;
8. Require deactivation or removal of SWFs not deployed in compliance with an issued permit or the terms of applicable laws or licenses; and

9. Take such other steps as may be required to timely act upon applications for deployment or modification of SWFs or EFRs to modify an existing SWF, including entering into agreements to mutually extend the time for action on an application and responding to claims that denial would result in a prohibition or effective prohibition under applicable federal law.

Section 6. Section 6.08.050(B) of the Bellevue City Code is hereby amended to read as follows:

B. *Regulations.* The decisions on applications for SWF permits shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined by the director that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services through a SWF or EFR, or otherwise violate applicable laws or regulations. If that determination is made, requirements of this chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

Section 7. Section 6.08.050(C)(2) of the Bellevue City Code is hereby amended to read as follows:

2. Ensures that the city bears no risk or liability as a result of the SWF or EFR installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon, or vacate the public rights-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights-of-way.

Section 8. Section 6.08.050(C)(3) of the Bellevue City Code is hereby amended to read as follows:

3. *Other Applicable Requirements.* In addition to the SWF permit required by this chapter, the deployment of an SWF in the right-of-way requires the persons who will own or control those facilities to obtain all necessary federal (including FCC or FAA requirements), state and local licenses, permits and approvals including, but not limited to, a Right-of-Way Use Agreement (RUA), Master License Agreement, Site License Agreement right-of-way use permits, temporary traffic control plans, proof of agency and permits for the construction, maintenance and operation of the SWF or installation of a replacement pole (collectively referred to hereinafter as "government approvals") at its sole expense.

Section 9. Section 6.08.050(D) of the Bellevue City Code is hereby amended to read as follows:

D. *Design Standards for SWFs in the Right-of-Way.* The city of Bellevue has a history of investing in and maintaining rights-of-way in a manner that reflects the character of existing and future planned development by taking into account the land use districts bounding the rights-of-way. Applications for SWF and SWF EFR permits shall incorporate specific concealment elements and design standards described in this section to minimize visual impacts. Unless it is determined that another design is equivalent to or less intrusive through the optional preapproved design process (pursuant to BCC 6.08.060(E)), the following standards shall be met:

...

Section 10. Section 6.08.050(D)(1)(a) of the Bellevue City Code is hereby amended to read as follows:

a. *Pole-Mounted Antenna(s) – Mounting Locations.* Pole-mounted antennas are the preferred deployment option and shall be located : (i) flush-mounted to the pole as close as technically feasible, but in no case greater than a distance of 12 inches measured from the outside edge of the pole to the inside edge of the antenna; (ii) side-mounted to the pole as close as technically feasible, but in no case greater than a distance of 12 inches measured from the outside edge of the pole to the inside edge of the antenna; and/or (iii) mounted to the top of the pole in a canister that does not exceed 18 inches in diameter. All SWF antennas shall be located entirely within the limits of the right-of-way. When an installation includes more than one flush-mounted or side-mounted antenna, the antennas shall be located as symmetrically around the pole to which they are affixed as is technically feasible.

Section 11. Section 6.08.050(D)(1)(e) of the Bellevue City Code is hereby amended to read as follows:

e. *Pole-Mounted Equipment – Shrouding and Maximum Size.* Pole-mounted equipment is the preferred deployment option and shall be: (i) consolidated to the greatest extent technically feasible; (ii) covered by a full or partial shroud which creates a uniform appearance and conceals all equipment, cabling and attachment points; and (iii) no larger than is reasonably necessary to conceal the consolidated equipment, but in no case shall the maximum volume exceed 15 cubic feet. An electrical disconnect not exceeding 0.4 cubic feet and mounted in compliance with the locational criteria of subsection (D)(2)(a) of this section may be located independent of the pole mounted equipment to maintain disconnect functionality and maintenance worker safety.

Section 12. Section 6.08.050(D)(1)(f)(i) of the Bellevue City Code is hereby amended to read as follows:

i. Any necessary ground-based equipment in an undergrounded area shall be undergrounded to the extent technically feasible.

Section 13. Section 6.08.050(D)(1)(g) of the Bellevue City Code is hereby amended to read as follows:

g. *Unified Enclosure(s).*

i. **Maximum Size.** A unified enclosure(s) may be co-located on a pole with other antenna(s) or equipment provided the combined volume of the equipment within and outside the unified enclosure(s) shall not exceed 15 cubic feet in the aggregate, and the combined volume of antenna(s) within and outside the unified enclosure(s) shall not exceed 15 cubic feet in the aggregate.

ii. **Antennas and Equipment.** Antennas and equipment may be consolidated in a unified enclosure; provided, that the consolidation shall be: (i) no larger than is reasonably necessary to conceal the antenna(s) and equipment (ii) mounted in compliance with the locational criteria of subsection (D)(1)(a) of this section; and (iii) mounted in compliance with the locational criteria of subsection (D)(2)(a) or (D)(3)(a) of this section.

iii. **Electrical Disconnect.** An electrical disconnect not exceeding 0.4 cubic feet and mounted in compliance with the locational criteria of subsection (D)(2)(a) of this section may be located independent of the consolidated antenna and equipment to maintain disconnect functionality and worker safety.

Section 14. Section 6.08.050(D)(1)(h) of the Bellevue City Code is hereby amended to read as follows:

h. *Visual Impact.* Antenna(s) and equipment shall have subdued colors and nonreflective materials unless otherwise approved by the City. To the greatest extent technically feasible, contrast between the pole and attached antenna(s) and equipment, colors, finishes, brackets and configuration shall be minimized.

Section 15. Section 6.08.050(D)(2)(a) of the Bellevue City Code is hereby amended to read as follows:

a. *Pole-Mounted Equipment – Mounting Locations.* Any pole-mounted equipment shall be located entirely within the limits of the right-of-way, and in accordance with: (i) the Transportation Department Design Standards and Plans, or (ii) the Optional Preapproved Design.

Section 16. Section 6.08.050(D)(2)(c) of the Bellevue City Code is hereby amended to read as follows:

c. *Wiring.* Transmission, fiber, power cables and any other conduit shall be contained within any concrete, glulam wood or metal pole. Wires contained within the interior of the pole are not included in the calculation of maximum equipment volume. No wiring shall be visible on the exterior of the pole. Wire connecting the antenna(s) to the antenna equipment shall be consolidated and pulled as tight as technically feasible or concealed within a shroud. A shroud shall be the minimum size necessary to consolidate and conceal connecting wires. The volume of area enclosed within the shroud will not be counted against the maximum antenna or equipment volumes allowed pursuant to subsections (D)(1)(b) and (D)(1)(e) of this section. Loops of extra wire shall not be lashed to the pole, to electrical wires supported by the pole, or to any pole-mounted antenna equipment.

Section 17. Section 6.08.050(D)(3)(a) of the Bellevue City Code is hereby amended to read as follows:

a. *Pole-Mounted Equipment – Mounting Locations.* Any pole-mounted equipment shall be located: (i) pursuant to separation requirements of the utility pole owner as necessary to ensure proper functioning of the utility service; (ii) no less than 10 feet from the ground; and (iii) entirely within the limits of the right-of-way.

Section 18. Section 6.08.050(D)(4)(b) of the Bellevue City Code is hereby amended to read as follows:

b. *Maximum Height.* The maximum height of a proposed purpose-built pole, inclusive of antenna, shall be the shorter of 50 feet, or no more than 10 percent taller than adjacent city or utility poles located within 600 feet, unless otherwise approved by the director.

Section 19. Section 6.08.050(D)(5)(d) of the Bellevue City Code is hereby amended to read as follows:

d. *Limitation on Deployment.* Strand-mounted facilities are prohibited between purpose-built poles, or between existing poles that do not support electric, telephone, data, telecommunications, cable services and similar utility lines or strands. No more than two SWF installations are permitted between two poles.

Section 20. Section 6.08.060(C) of the Bellevue City Code is hereby amended to read as follows:

C. *Notice of Incompleteness.* For SWF permits and SWF EFR permits, applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, the

director may issue a notice of incompleteness identifying the material omitted from the application.

Section 21. Section 6.08.060(F) of the Bellevue City Code is hereby amended to read as follows:

F. *One-Time Fees.* Applicant shall be responsible for paying all costs associated with city review, processing and inspection as part of all SWF or SWF EFR permit applications filed for the installation, modification, maintenance and removal of an SWF. The city shall track its time spent reviewing the applicant's application submittals and conducting inspections. The hourly rate for one-time fees shall be assessed and administered consistent with standard city practice and fee schedule(s) as currently adopted and subsequently amended or replaced.

Section 22. A new subsection (e) is added to Section 6.08.070(A)(1) of the Bellevue City Code to read as follows:

e. The applicant has an executed circuit access agreement with the city if connecting to and accessing city systems for electrical power.

Section 23. Section 6.08.070(A)(2) of the Bellevue City Code is hereby amended to read as follows:

2. *Decisions.* Decisions on a SWF permit request shall be in writing and shall include any applicable conditions of approval in addition to the requirements of this Chapter. Any permit granted in response to a SWF application for a modification shall be subject to the terms and conditions of the underlying SWF permit. In the event of a conflict between the conditions of the underlying SWF permit and the SWF permit for the modification, the conditions of the SWF permit for the modification shall govern.

Section 24. Section 6.08.070(B) of the Bellevue City Code is hereby amended to read as follows:

B. *Installation Timing.* Applicant shall complete installation and commence operation of its SWF no later than twelve (12) months after issuance of governmental approvals and permits; provided this twelve-month period may be extended (a) automatically due to delays in installation of necessary fiber backhaul or electrical power, or (b) upon written consent of the city; provided, however, in no event shall such extension exceed 18 months beyond issuance of government approvals and permits. Failure of the applicant to complete installation or commence operation of the applicable SWF as provided above shall permit the city to terminate the SWF or SWF EFT permit upon 30 days' notice to applicant unless within such 30-day period applicant either (a) completes installation or commences operation, or

(b) the city consents in writing to extend the time within which applicant must complete installation and commence operation.

Section 25. Section 6.08.070(C) of the Bellevue City Code is hereby amended to read as follows:

C. Post-Installation Inspection.

1. *Scheduling.* Within 20 business days of completing installation of a permitted SWF or SWF EFR, the applicant shall call for a city inspection and provide post-installation certification of compliance with FCC RF emissions requirements if requested.

2. *Final.* The city shall inspect the site to verify whether the SWF or SWF EFR installation complies with the terms of the granted SWF or SWF EFR permit and shall notify the applicant of the results of the inspection. Installations found to be compliant with all terms of the applicable permit may be activated and begin operation. Installations found not to be compliant with all terms of the applicable permit shall be modified to be compliant with the issued permit, and reinspected to verify compliance. SWF and SWF EFR installations may not be operated before installation compliance is verified by city inspection. No city inspection (or approval) shall relieve or supersede an applicant's obligation to comply with the terms of an issued SWF or SWF EFR permit.

3. *Grounds for Deactivation.* If an SWF or SWF EFR installation is found at any time not to be in compliance with the requirements of the applicable permit or presenting an immediate public safety issue, the city may require the permit holder to cure the noncompliance or deactivate and remove the noncompliant facility pursuant to the terms of Chapter 1.18 BCC (Civil Violations).

Section 26. Section 6.08.070(D) of the Bellevue City Code is hereby amended to read as follows:

D. As-Built Drawings. The permittee shall submit an as-built drawing within 90 days after installation of an SWF or an approved SWF EFR, on a city pole. As-builts shall be in an electronic format acceptable to the city.

Section 27. Section 6.08.080 of the Bellevue City Code is hereby amended to read as follows:

6.08.080 Modifications.

A. Limitation on Modifications. Applications for modifications to a preexisting SWFs, other than SWF EFRs, shall be processed as SWF Permits and shall only be

granted if the SWF will continue to comply with specific concealment elements and design standards intended to minimize visual impacts..

B. *Eligible Facilities Requests (EFRs)*. The director shall approve a SWF EFR permit if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

1. That the application is an eligible facilities request as defined in 47 CFR 1.6100(b)(3), or any successor provision;
2. That the applicant has an executed RUA with the city;
3. That the applicant has an executed master license agreement with the city if any component of the proposed EFR involves use of a city pole.
4. That the proposed facility will comply with all generally applicable laws.
5. That the applicant has an executed circuit access agreement with the city if connecting to and accessing city systems for electrical power.

If the findings for approval of the SWF EFR permit cannot be made, the director shall notify the applicant in writing of the reasons for denial. If the Director finds the application is not an eligible facilities request, the Director shall also require the applicant to provide any additional information needed to complete a SWF permit application form for the proposed facility.

C. *Supplemental Conditions*. All SWF EFR permits granted pursuant to this section shall be subject to the following additional conditions, unless modified by the director:

1. *Permit Subject to Conditions of Underlying Permit*. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit. In the event of a conflict between the conditions of the underlying permit and the SWF EFR permit, the conditions of the SWF EFR permit shall govern.
2. *No Extension of Underlying Approvals*. The director's grant or grant by operation of law of a SWF EFR permit constitutes a federally mandated modification to the underlying government approval for the subject base station, and shall not extend the term for any

underlying government approval and its term shall be coterminous with the underlying government approvals for the subject base station.


3. *No Waiver of Standing.* The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

Section 28. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section 29. This Ordinance shall take effect and be in force thirty (30) days after its passage and legal publication.

Passed by the City Council this 9th day of OCTOBER, 2023 and signed in authentication of its passage this 9th day of OCTOBER, 2023.





Lynne Robinson, Mayor

Approved as to form,
Kathryn L. Gerla, City Attorney



Monica A. Buck, Assistant City Attorney

Attest:


Charmaine Arredondo, City Clerk

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