

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2392

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON,
AMENDING SMC 14.242 WIRELESS COMMUNICATIONS FACILITIES
TO MEET FEDERAL ELIGIBLE FACILITIES REQUEST
REQUIREMENTS AND TO PROVIDE INTERNAL CONSISTENCY, AND
PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE**

WHEREAS, Section 332 of the Communications Act allows local governments to retain authority over zoning and land use decisions for personal wireless facilities; and

WHEREAS, local government control is limited by certain requirements overseen by the FCC; and

WHEREAS, 47 U.S. Code Section 1455 states that a local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code (“Development Code”) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the City; and

WHEREAS, the repeal of SMC 14.242.020 Definitions by Ordinance 2401 removed provisions related to eligible facilities requests that requires additional clarifying amendments within the Chapter; and

WHEREAS, it is appropriate and necessary for consistency to maintain a provision that clarifies the regulation of eligible facilities outside of a definition but within Chapter 14.242; and

WHEREAS, it is necessary and proper to add Code provisions to implement Federal requirements; and

WHEREAS, the intent to amend development regulations was noticed in accordance with City of Snohomish procedures and regulations as provided for in SMC 14.15.070, and on April 3, 2020, a 60-day notice was sent to the Washington State Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, the proposed amendments to the City’s Development Code were publicly noticed and circulated for review and comment in accordance with the City’s normal review and permitting procedures on April 16, 2020; and

WHEREAS, pursuant to the State Environmental Policy Act, the City of Snohomish was designated as the lead agency for review of the proposed amendment. A Determination of Non-Significance was issued pursuant to WAC 197-11-355 on April 16, 2020. No appeal of the determination was received so the determination stands; and

WHEREAS, on February 5, 2020, March 4, 2020, and June 3, 2020, the Planning Commission conducted work sessions which were open to the public to discuss the proposed amendments; and

WHEREAS, on July 1, 2020, a public hearing on the proposed amendments set forth herein was held before the Planning Commission and all persons wishing to be heard were heard; and

WHEREAS, following the public hearing and pursuant to SMC 14.15.090, the Planning Commission made written findings and issued a recommendation to the City Council to approve the proposed amendments as set forth herein, finding the proposed amendments are internally consistent with the City’s Comprehensive Plan, the Growth Management Act, and the State Environmental Policy Act, and are in the interest of the public health, safety, and welfare of Snohomish residents; and

WHEREAS, on July 21, 2020, a public hearing on the proposed amendments was held by the City Council, and all persons wishing to be heard were heard; and

WHEREAS, the City Council found the proposed amendments to be consistent with the City of Snohomish Comprehensive Plan, the Washington State Growth Management Act and State Environmental Policy Act, and is in the interest of the public health, safety, and welfare of Snohomish residents.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. **Adoption of recitals as findings.** The City Council hereby adopts each of the recital paragraphs above as findings and hereby incorporates them by reference as though fully stated herein.

Section 2. **Adoption of Planning Commission findings.** The Planning Commission findings as set forth in “Exhibit A” are hereby adopted and incorporated by reference, including but not limited to the findings that the Development Code regulations and amendments adopted by this Ordinance are:

- a. Internally consistent with the City of Snohomish Comprehensive Plan;
- b. Consistent with the Washington State Growth Management Act;
- c. Consistent with the Washington State Environmental Policy Act (Chapter 43.21C RCW); and
- d. In the interest of the public health, safety, and welfare of Snohomish residents.

Section 3. SMC 14.242.075 Eligible Facilities Request. A new SMC Section 14.245.075, entitled “Eligible Facilities Request,” is hereby adopted and shall read as follows:

14.242.075 Eligible Facilities Request.

- A. An “Eligible facilities request” is any request for modification of an existing tower or base station that, within the meaning of the Spectrum Act, does not substantially change the physical dimensions of that tower or base station and involves the:
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment; or
 - 3. Replacement of transmission equipment.

- B. In the context of an eligible facilities request, “substantially change” shall mean a modification of an existing tower or base station where any of the following criteria is met:
 - 1. For a tower located outside of public rights-of-way:
 - a. The height of the tower is increased by more than twenty feet or by more than ten percent, whichever is greater; or
 - b. There is added an appurtenance to the body of the tower that would protrude from the edge of the tower by more than twenty feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
 - 2. For a tower located in the public right-of-way and for all base stations:
 - a. The height of the tower is increased by more than ten percent or ten feet, whichever is greater; or
 - b. There is added an appurtenance to the body of that structure that would protrude from edge of the tower by more than six feet.
 - 3. For all base stations:
 - a. The height of the base station is increased by more than ten percent or ten feet, whichever is greater; or
 - b. It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not more than for four cabinets.
 - 4. For either a tower or a base station:
 - a. There is entailed in the proposed modification any excavation or deployment outside the current site of the tower or base station; or
 - b. The proposed modification would cause the concealment or camouflage elements of the tower or base station to be defeated; or
 - c. It does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.
 - 5. To measure changes in height for the purposes of this section, the baseline is:
 - a. For deployments that are or will be separated horizontally, measured from the original support structure.
 - b. For all others, measured from the dimensions of the tower or base station, inclusive of the originally approved appurtenances and any modifications that were approved by the City or Snohomish County, in the case of annexed facilities, prior to February 22, 2012.

- c. To measure changes for the purposes of this section, the baseline is the dimensions that were approved by the City or Snohomish County, in the case of annexed facilities, prior to February 22, 2012.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 5. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance and attachments including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 6. Effective Date. This Ordinance shall be effective five days after adoption and publication by summary.

ADOPTED by the City Council and **APPROVED** by the Mayor this 21st day of July, 2020.

CITY OF SNOHOMISH

By John T. Kartak
John T. Kartak, Mayor

ATTEST:

APPROVED AS TO FORM:

By Pat Adams
Pat Adams, City Clerk

By Grant K. Weed
Grant K. Weed, City Attorney

Date of Publication: July 25, 2020

Effective Date (5 days after publication): July 30, 2020

EXHIBIT A

Snohomish Planning Commission Findings of Fact & Conclusions

Based on the review of the proposed amendments to the Definitions chapter and other sections of Title 14 Snohomish Municipal Code related to definitions, the Planning Commission of the City of Snohomish makes the following Findings of Fact:

1. The City has the authority under RCW Title 35A to adopt regulations related to land use development.
2. The City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code (SMC) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the city.
3. Chapter 14.100 SMC contains definitions for the Land Use Development Code, but definitions can also be found in sections SMC 14.212.1020, SMC 14.222.020, SMC 14.242.020, SMC 14.245.020, SMC 14.295.040, and SMC 14.300.170.
4. Some of the definitions are out of date and cumbersome, and require revisions to ease administration of Title 14.
5. All definitions in Title 14 should be consolidated as much as possible within a single chapter of Title 14 that appears earlier in Title 14.
6. Elimination of definitions within Chapters 14.242, 14.295, and 14.300 SMC requires clarifying amendments within those chapters.
7. The existing non-definition language of SMC 14.242.075, 14.295 and SMC 14.300 is inconsistent and ambiguous and should be amended to make the regulations easier to understand and administer.
8. The proposed amendments to Title 14 SMC will add a new Chapter 14.25 SMC (Definitions), containing consolidated definitions of Title 14. Chapter 14.100 SMC will be repealed. All other chapters containing definitions sections will be amended to remove these sections, and in some cases, additional amendments are proposed for clarification purposes, or for internal consistency.
9. The proposed amendments implement the following policies contained in the Snohomish Comprehensive Plan:
 - a. Policy HO 6.4: Periodic review. Periodically evaluate permit review processes to minimize costs to developers to the extent possible while preserving the public health, safety, and welfare.
 - b. Policy ED 2.1: Review codes. Evaluate the City's zoning ordinances for impediments to and consistency with the current economic development vision and market trends and opportunities.
10. Procedural requirements.
 - a. The proposed amendments are consistent with state law.

- b. Pursuant to RCW 36.70A.106(1), a notice of intent to adopt the proposed amendments was transmitted to the Washington State Department of Commerce for distribution to state agencies on April 3, 2020.
 - c. Pursuant to the State Environmental Policy Act (SEPA), the City of Snohomish, as designated lead agency for review of the proposed amendment, issued a Determination of Non-Significance on April 17, 2020 pursuant to WAC 197-11-340(2).
 - d. The public process used in the adoption of the proposed amendments has complied with all applicable requirements of the GMA and the SMC.
- 11. The Planning Commission met on February 5, 2020, March 4, 2020, and June 3, 2020 to hold work sessions and provide direction on staff-generated definitions and other code language related to these amendments.
 - 12. A Notice of Planning Commission Public Hearing consistent with Snohomish Municipal Code requirements, was published on June 13, 2020.
 - 13. The Planning Commission held a public hearing on July 1, 2020, to receive public testimony concerning the proposed amendment.
 - 14. At the conclusion of the public hearing, the Planning Commission voted to recommend City Council approval of the proposed amendments.

Based on the foregoing Findings of Fact, the Snohomish Planning Commission hereby makes the following conclusions.

- 1. The proposed amendments will consolidate, update, remove inconsistencies, and improve clarity of definitions within Title 14 of the Snohomish Municipal Code.
- 2. The proposed amendments are consistent with Washington State law and the SMC.
- 3. The proposed amendments implement and are consistent with the goals and policies of the Comprehensive Plan.
- 4. The proposed amendments protect the public health, safety, and general welfare.
- 5. The proposed amendments do not result in an unconstitutional taking of private property for public purpose and they do not violate substantive due process guarantees.

Date: July 15th, 2020

By: Terry Lippincott
Terry Lippincott, Planning Commission Chair