

Chapter 20.102

ELIGIBLE FACILITIES MODIFICATIONS

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20.102.010 Title.

This Chapter shall be known and referred to as the “Eligible Facilities Modification Code” or “EFM Code”. Unless the context indicates otherwise, a reference herein to “this code” or “this chapter” shall mean and refer to the Eligible Facilities Modification Code.

20.102.020 Adoption of Findings and Conclusions.

The recitals set forth in the ordinance adopting this code are adopted as findings and conclusions of the City Council.

20.102.030 Purpose and Intent.

- (1) To implement § 6409 of the “Middle Class Tax Relief and Job Creation Act of 2012” (the “Spectrum Act”) (PL-112-96; codified at 47 U.S.C. § 1455(a)) which requires the City to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station;
- (2) To implement the FCC rules set forth at 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) new Subpart CC § 1.40001 (Wireless Facility Modifications), which rules implement § 6409 of the Spectrum Act;
- (3) To establish procedural requirements and substantive criteria applicable to review and approval or denial of applications for an eligible facilities modification;
- (4) To ensure that application submittal requirements are related to information reasonably necessary to the determination of whether or not the proposed modification will result in a substantial change in the physical dimensions of the eligible support structure;
- (5) To exempt facilities modifications approved under this chapter as eligible facilities requests from zoning and development regulations that are inconsistent with or preempted by Section 6409 of the Spectrum Act;
- (6) To preserve the City’s right to continue to enforce and condition approvals under this chapter on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety;
- (7) To promote timely decisions under this chapter;
- (8) To ensure that decisions are made consistently and predictably;
- (9) To incorporate provisions of RCW 43.21C.0384 that exempt eligible facilities modifications from review under RCW 43.21C.030(2)(c), (State Environmental Policy Act);
- (10) To recognize that Section 6409(a)(1) of the Spectrum Act operates to preempt any provision of the State Environmental Policy Act (RCW Ch. 43.21C) to the extent that any such provision, including RCW 43.21C.030(2)(c), would prohibit a City from approving 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
- (11) To provide for termination of eligible facilities modifications approved pursuant to this chapter, as nonconforming structures in the event that § 6409(a) of the Spectrum Act is found to be unconstitutional or otherwise determined to be invalid or unenforceable and such modifications would otherwise have been in derogation of development regulations in place at the time of receipt of a completed application.

20.102.040 Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter, unless the context clearly requires otherwise. Any term or phrase not defined herein, shall have the meaning that is given to that term or phrase in Chapter 20.08 of the Arlington Municipal Code (AMC). When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory and the word “may” is always discretionary. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.

“Base station” shall mean and refer to the structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower. The term includes, without limitation:

- (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- (3) Any structure other than a tower that, at the time an eligible facilities request is filed with the City under this Chapter, supports or houses equipment described in paragraphs (i) - (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (4) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the City under this section, does not support or house equipment described in paragraphs (i) - (ii) above.

“Collocation” shall mean and refer to 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.

“Eligible Facilities Request” shall mean and refer to 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:

- (1) Collocation of new transmission equipment;
- (2) Removal of transmission equipment; or
- (3) Replacement of transmission equipment.

“Eligible support structure” shall mean and refer to any existing tower or base station as defined in this chapter, provided that it is in existence at the time the eligible facilities modification application is filed with the City under this chapter.

“Existing” shall, for purpose of this chapter and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the City, or under another State, county 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.

“Site” shall, for towers other than towers in the public rights-of-way, mean and refer to the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, shall mean and be further restricted to, that area in proximity to the structure and to other transmission equipment already deployed on the ground.

“Substantial change” shall refer to a change which substantially changes the physical dimensions of an eligible support structure which meets any of the following criteria:

- (1) 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 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- (2) For towers other than towers in the public rights of way, it involved 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 feet;
- (3) 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 associate 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;
- (4) It entails any excavation or deployment outside the current site;
- (5) It would defeat the concealment elements of the eligible support structure; or
- (6) 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 in paragraphs (i) – (iv) of this section.

“Transmission Equipment” shall mean and refer to equipment that facilitates transmission for any wireless communication service licensed or authorized by the FCC, 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.

“Tower” shall mean and refer to any structure built for the sole or primary purpose of supporting any antennas and their associated facilities, licensed or authorized by the FCC, 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.

20.102.050 Application Review.

- (a) **Application.** The City shall prepare and make publicly available an application form which shall be limited to the information necessary for the City 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.
- (b) **Type of Review.** Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the Community Development Director or his or her designee shall review such application to determine whether the application so qualifies.
- (c) **Timeframe for Review.** Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, the City shall approve the application unless it determines that the application is not covered by this Chapter.
- (d) **Tolling of the Timeframe for Review.** The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by City and the applicant, or in cases where the Community Development Director determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
 - (1) To toll the timeframe for incompleteness, the City must approve written notice to the applicant within 30 days of receipt of the application, 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 City’s notice of incompleteness.
 - (3) Following a supplemental submission, the City will notify the applicant within 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 paragraph (d) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (e) **Interaction With Section 332(c)(7).** If the City determines that the applicant’s request is not covered by Section 6409(a) as delineated under this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC’s Shot Clock order, will begin to run from the issuance of the City’s decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under Section 332(c)(7), pursuant to the limitations applicable to other Section 332(c)(7) reviews.
- (f) **Failure to Act.** In the event the City fails to approve or deny a request seeking approval under this Chapter 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 applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
- (g) **Remedies.** Applicants and the City may bring claims related to Section 6409(a) to any court of competent jurisdiction.

20.102.060 Enforcement Violation.

Compliance with the provisions of this chapter is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions set forth at AMC Chapter 11.01 of the City Code.