

CITY OF MEDINA

ORDINANCE NO. 623

AN ORDINANCE ESTABLISHING APPROPRIATE LOCATIONS, REGULATIONS AND DEVELOPMENT STANDARDS FOR WIRELESS COMMUNICATION FACILITIES, AMENDING SECTIONS 2, 3, 4, 5, 7, 8 AND 11 OF ORDINANCE NO. 609, REPEALING THE MORATORIUM ESTABLISHED BY RESOLUTIONS 242 AND 243 AND PROVIDING FOR REINSTATEMENT OF A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF SPECIAL USE PERMITS FOR WIRELESS FACILITIES IF ANY SECTION OF THIS ORDINANCE IS FOUND TO BE VOID.

WHEREAS, the City of Medina declared a moratorium on the issuance of special use permits for wireless communications facilities in February of 1996 to allow the City time to develop appropriate regulations, and

WHEREAS, the City of Medina passed Ordinance No. 609 establishing appropriate locations, regulations and development standards for wireless communications facilities, and

WHEREAS, at the urging of a substantial number of citizens, the City Council passed a second moratorium on accepting and processing permits for wireless facilities in order to have an opportunity to study additional concerns raised by these citizens, and

WHEREAS, this ordinance is based upon the assumption that the Federal Government has completely preempted the ability of cities to regulate location or placement of wireless facilities based upon health concerns related to radio frequency emissions, and

WHEREAS, this ordinance is designed to supplement, and in places replace the provisions of Ordinance No. 609 to address legitimate citizen concerns about the visual impact of wireless facilities and the negative impact of wireless facilities on residential property values, and

WHEREAS, advancing technology has eliminated the need for directional (panel) antennas which are typically arranged in one or more sectors of two or more panels each, thereby having

the greatest visual impact of all antennas, and

WHEREAS, tubular panel antennas are available which have much less visual impact than directional antenna arrays, and

WHEREAS, technology exists to allow all equipment enclosures to be placed underground, now, therefore,

THE CITY COUNCIL OF THE CITY OF MEDINA ORDAINS  
AS FOLLOWS:

SECTION 1. DEFINITIONS:

A. The definitions contained in Ordinance No. 609 A through E are hereby adopted by reference.

B. The following new definitions are added to Ordinance No. 609, Section 2 A.

Tubular Panel Antenna: An antenna which is eighteen inches (18") in diameter or less and which is capable of receiving or transmitting signals in a three hundred sixty (360) degree pattern and which is less than eight feet (8') in height.

Residential Use Property: All portions of any property which contains a residence and all portions of any vacant property which is zoned for residential use. Residential use property includes property located within adjoining jurisdictions.

SECTION 2. ORDINANCE NO. 609, SECTION 3 AMENDED:

Section 3 of Ordinance No. 609 is amended to read as follows:

SECTION 3. PERMITTED LOCATIONS:

A. WCFs may be mounted on all currently existing nonresidential buildings which are located at least 500 feet from the nearest residential use property [~~except as follows:~~—

~~1. The Medina City Hall and the Medina Store which are excepted because of their historic architectural significance.~~—

~~2. Any building which is an accessory structure~~

~~to a residence.~~

~~3. Buildings which, due to their small size, would be dominated by the facility, such as the rest rooms at Medina Park.]~~

B. Building Mounted WCFs must meet the following conditions and criteria:

1. A building mounted WCF may consist of one of the following:

- a. ~~Up to four nonreflective panel antennas. No one antenna shall exceed 480 square inches and the total of the combined antennas shall not exceed 1,440 square inches of surface area; or] One tubular panel antenna; or~~
- b. One whip antenna; or
- c. One nonreflective parabolic dish 1' or less in diameter.
- d. In the event of co-location, more than one of the facilities described above may be included.

2. In addition to the overall height limitations in Section 4, the antennas must conform to the following height restrictions relating to the existing building:

- a. ~~[5' measured to the top of a panel antenna above the roof proper of the existing building at the point of attachment.] 6' 8" measured to the top of a tubular antenna above the roof proper at the point of attachment.~~
- b. 10' measured to the tip of a whip antenna above the roof proper of the existing building at the point of attachment.
- c. 5' measured to the top of a parabolic dish above the roof proper of the existing building at the point of attachment.

3. Whip and tubular antennas shall be camouflaged and located to minimize views from residential structures and rights-of-way.

4. ~~[Panel and]~~ Parabolic, ancillary and other antennas shall be completely screened from residential views and public rights-of-way in

a manner that is architecturally compatible with the building on which it is located.

5. Equipment enclosures shall be located within the building on which the facility is placed or located underground. [~~if site conditions permit. Otherwise, equipment enclosures shall be screened from view by compatible wall fences or landscaping.~~]

C. WCFs requiring construction of a support structure may be located on the site of existing nonresidential uses except the following:

1. All portions of all City parks. [~~except that portion of Medina Park which is substantially sheltered from public view by the City Shop and the Puget Power Substation.~~]

[~~2. Areas where support structures may not be effectively screened from view by existing structures.~~]

2. All portions of the Fairweather Nature Preserve except non-forested areas adjacent to the 520 right-of-way.

3. Areas where support structures cannot be located at least 500 feet from the nearest residential use property line, [~~or the nearest vacant property zoned for residential use,~~] measured from the property line.

D. WCFs requiring construction of a support structure must be located on a portion of a site that is effectively isolated from view of residential areas by structures or terrain features unless they are integrated or act as an architectural element of the structure, such as a flag pole.

E. WCFs are not allowed on residential properties or on City rights-of-way.

SECTION 3. ORDINANCE NO. 609, SECTION 4 AMENDED:

Section 4 of Ordinance No. 609 is amended to read as follows:

- [A]. All WCFs utilizing a free-standing support structure shall be limited to 35' in height [~~above original grade,~~] including the height of all [~~attached directional parabolic and ancillary~~]

antennas.

~~[B. Omni-directional antennas and supporting structures shall be limited to 40' in height above original grade.~~

SECTION 4. ORDINANCE NO. 609, SECTION 5 AMENDED:

A. Free-standing WCFs shall conform to the following site development standards:

1. Support structures shall be setback from all residential [~~property~~] use properties a distance [~~equal to the height of the support structure plus the height of any antennas, and shall comply with all required setbacks of the zoning district in which it is located~~] of 500 feet.
2. Support structures shall be designed and placed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures so as to:
  - a. Use existing site features to screen as much of the total WCF as possible from prevalent views; and/or,
  - b. Use existing site features as a background so that the total WCF blends into the background with increased sight distances.
3. Relocation of a proposed facility on the site and in-fill landscaping of mature plant materials consistent with landscaping of the City may be required by the Planning Commission to make the best use of or to supplement existing trees and vegetation to more effectively screen the facility.
4. Support structures [~~panel~~] and parabolic antennas, and any associated hardware shall be painted a nonreflective color or color scheme appropriate to the background against which the WCF would be viewed from a majority of points within its viewshed. Natural colors only may be employed and the final colors and color scheme must meet the approval of the Planning Commission.

5. Equipment enclosures shall conform to the following:
- a. Equipment enclosures will be placed underground [~~if site conditions permit and if technically feasible.~~] Equipment enclosures may not extend more than five inches above the ground at original or finished grade whichever is lower.
  - b. Any visible portion of equipment enclosures shall be screened from view. [~~except as provided in e. below.~~]
  - [~~e. Walk-in equipment enclosures:~~
    - 1) ~~May not be constructed with exposed metal surfaces.~~
    - 2) ~~May not be required to be totally screened from view provided the Planning Commission finds that:~~
      - a) ~~The walk-in equipment enclosure has been designed using materials, colors, and detailing that produces a structure which emulates the residential character of the City.~~]
6. All heights shall be measured from original grade or finish grade, whichever is lower.
7. All applicants shall submit as built drawings following completion and all heights must be confirmed by survey after construction by a licensed surveyor or engineer.

SECTION 5. ORDINANCE NO. 609, SECTION 7 C AMENDED:

Section 7 C of Ordinance No. 609 is amended to read as follows:

- C. The permit fee for each new or renewal permit for each site shall be \$5,000.00 plus all consulting costs as described in MMC 17.44.020. [~~the permit fee shall be reduced to \$3,000 plus consulting costs for an applicant who is co-locating at the site of an existing provider and does not require any additional support structure or expansion of an existing support structure.~~] If more than one installation is sought to be approved under a single permit, a full permit fee shall be paid for each installation, provided that if the facility is exempt from FCC regulation and if the City Manager finds that each separate facility is insignificant

in terms of aesthetic impact upon the surrounding neighborhood, the City Manager may, in his or her sole discretion, reduce the permit fees to be charged. Such reduction may only be made after public hearing on the permit.

SECTION 6. ORDINANCE NO. 609, SECTION 8 AMENDED:

Section 8 of Ordinance No. 609 is amended to read as follows:

SECTION 8. RADIO FREQUENCY STANDARDS:.

- A. The applicant shall comply with Federal standards for radio frequency emissions. Within six months after the issuance of its operational permit, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site and compares the results with established Federal standards. Said report shall be subject to review and approval of the City [~~is Planning Consultant~~] for consistency with Federal standards. If on review, the City finds that the WCF does not meet Federal standards, the City may revoke or modify this Special Use Permit.
- B. The applicant shall ensure that the WCF will not cause [~~localized~~] interference with the reception of area television or radio broadcasts. If on review the City finds that the WCF interferes with such reception, and if such interference is not cured within sixty (60) days, the City may revoke or modify this Special Use Permit.
- C. At the time of application and at all other times requested by the City, the applicant shall supply information as to the number of channels capable of being employed at the site, their individual and combined potentially capacities and all other information requested by the City.

SECTION 7. ORDINANCE NO. 609, SECTION 10 A AND F AMENDED:

Section 10 A and F of Ordinance No. 609 are amended to read as follows:

- A. A Special Use Permit for a WCF shall expire 2 years after the effective date of the permit approval. A permittee wishing to continue the use of a

specific WCF at the end of the period must apply for a Special Use Permit renewal application to continue that use at least six months prior to its expiration. In ruling on said renewal the Planning Commission shall apply all regulations in effect at the time of renewal [~~then existing regulations~~] effecting the application.

[~~F. The applicant shall notify the City of all changes in ownership or operation of the facility within sixty (60) days of the change.~~]

SECTION 8. ORDINANCE NO. 609, SECTION 11 AMENDED:

Section 11 of Ordinance No. 609 is amended to read as follows:

SECTION 11. APPLICABILITY:

A. The requirements of this ordinance apply to all new WCFs and the expansion and/or alteration of any existing WCFs, [~~provided that an in-kind or smaller replacement of transmission equipment will only require a written notification to the City.~~]

B. The requirements of this ordinance apply throughout the City. It is the express intent of the City to impose all regulations on this ordinance to all land within the City, whether publicly or privately held, including, without limitation, private property, City property, state owned rights-of-way and/or property, church property, utility property and school property.

SECTION 9. WIRELESS COMMUNICATION FACILITIES SITING POLICIES.

The Wireless Communications Facilities Siting Policies adopted by the City Council on April 14, 1997 shall govern the location and placement of wireless communications facilities within the City. In the event of any conflict between this ordinance and said policies, the provisions of this ordinance shall govern.

SECTION 10. CONCEALMENT TECHNOLOGY:

A. Definition. "Concealment Technology" is defined as the use of both existing and future technology through which a wireless communications facility is designed to resemble an object which is not a



wireless communications facility and which is already present in the natural environment.

- B. Concealment Technology for Wireless Communications Facilities. All wireless communications facilities must use concealment technology.
- C. Concealment Technology for Equipment Shelters. All shelters for and all associated equipment needed for the operation of a wireless communications facility shall be located within an existing non-residential building or underground. Underground shelters shall not extend more than five inches above the existing surface and shall be completely and immediately screened by approved vegetation. Underground shelters shall not be allowed where their presence would interfere with existing uses of public land.

SECTION 11. TESTING:

- A. Testing Required. All existing and future wireless communications facilities shall be tested, not less frequently than annually, to determine if the facilities are in compliance with all applicable federal, state and local regulations. Facilities that are in existence on the effective date of this ordinance shall be tested within three (3) months after the effective date of this ordinance. All testing shall be conducted under the direction and control of the City.
- B. Regulations. The City Manager shall adopt specific testing procedures and protocols.
- C. Revocation of Permit. Any existing or future wireless communications facilities which does not comply all applicable federal, state and local regulations shall be removed, upon failure to bring the facility into compliance after thirty (30) days advance written notice.
- D. Cooperation. All existing and future wireless service providers shall cooperate with the City in performing the testing required by this ordinance. Cooperation shall include supplying necessary testing equipment which has current certification from an independent testing laboratory and shall include operating the equipment at up to full capacity and/or shutting off the equipment to allow baseline testing.

- E. Baseline Testing. All existing and future wireless service providers shall cooperate with the City in establishing baseline measurements of ambient radio frequency emissions which are present without contribution from the facility. To establish baseline testing, existing wireless service providers may be required to turn off all of their equipment. Future wireless service providers shall notify the City in advance when they are prepared to begin operating their equipment. Future wireless services providers shall not begin to operate their equipment until the City has obtained baseline measurements.
- F. Costs. All testing shall be at the cost of the wireless service providers. Failure to pay such costs shall be an adequate basis for the City to revoke all special use permits.

SECTION 12. REQUIREMENT TO DEMONSTRATE NEED:

All applications shall be accompanied with adequate information to demonstrate compliance with the requirements of Medina Wireless Communication Facilities Policy Number 8.

SECTION 13. ASSIGNMENT AND SUBLEASING:

- A. No facility, site or permit may be sold, transferred or assigned unless and until the assignee obtains a permit for the facility.
- B. No sublease shall be entered into by a provider until the sublessee has obtained a permit for its facility.
- C. An assignee or sublessee seeking a permit shall submit all data required for an original permit.

SECTION 14. APPLICATION FORM, INFORMATION TO BE PROVIDED:

All applications shall be submitted on a form to be developed under the supervision and control of the City Manager. All such applications, in order to be deemed complete, shall answer all enquiries contained in the application form and shall be accompanied by materials described within the application form. At a minimum, the application form shall require the following information:

- A. A complete description of the proposed facility.

- B. Coverage maps in a form acceptable to the City.
- C. Location map of all sites currently operated by the provider in a five mile radius of the proposed site, together with all sites for which the applicant holds the development rights, including but not limited to a binding commitment or option to lease a site. For each such site, the targeted area and capabilities of the sites shall be adequately described.
- D. All such additional information as the City Manager may, from time to time, request through modifications of the application form.
- E. All such additional information as the Planning Commission may identify, from time to time, as being relevant to the permitting process.

SECTION 15. VIOLATION, PENALTY: Violation of any provision of this ordinance, or of Ordinance No. 608, shall constitute a civil infraction, punishable by a civil penalty not to exceed \$1,000. Each day on which a violation continues shall constitute a separate civil infraction, punishable as provided herein. Violation of any provision of this ordinance, or of Ordinance No. 608, if not cured within thirty (30) days after advance written notice, shall constitute adequate cause for the City to modify or revoke any special use permit.

SECTION 16. EFFECTIVE DATE, REPEALER, REVIVAL OF MORATORIUM:

The City Council declares that this is a public emergency ordinance necessary for the protection of public health, safety, and welfare and shall be effective upon adoption. Upon the effective date of this ordinance, the moratorium upon the acceptance and processing of special use permits for communications facilities established in Resolution No. 242 and confirmed in Resolution No. 243 is repealed, provided, however, that if this ordinance or any section or clause contained in this ordinance is held to be unconstitutional or void for any reason, the moratorium established in Resolution No. 242 and confirmed in Resolution No. 243 shall be immediately reinstated for a period of six months to allow the City to formulate and pass new regulations.

PASSED BY THE CITY COUNCIL ON THIS 12th DAY OF MAY,  
1997 AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THE 19th,  
DAY OF MAY, 1997.

Susan Potts  
Susan Potts, Mayor Pro Tem

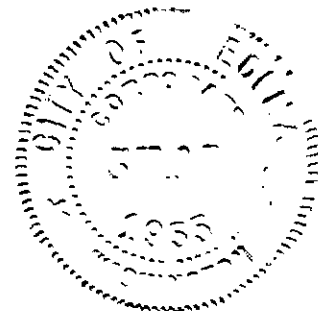
Approved as to form:

Kirk R. Wines  
Kirk R. Wines, City Attorney

Attest:

Harwood T. Edvalson  
Harwood T. Edvalson, City Clerk

Passed: 5/12/97  
Filed with City Clerk: 5/12/97  
Published: 5/16/97  
Effective Date: 5/12/97



**SUMMARY OF ORDINANCE NO. 623  
of the City of Medina, Washington**

On May 12, 1997, the City Council of the City of Medina, Washington, approved ordinance No. 623, the main points of which are summarized by its title as follows:

AN ORDINANCE ESTABLISHING APPROPRIATE LOCATIONS, REGULATIONS AND DEVELOPMENT STANDARDS FOR WIRELESS COMMUNICATION FACILITIES, AMENDING SECTIONS 2, 3, 4, 5, 7, 8 AND 11 OF ORDINANCE NO. 609, REPEALING THE MORATORIUM ESTABLISHED BY RESOLUTIONS 242 AND 243 AND PROVIDING FOR REINSTATEMENT OF A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF SPECIAL USE PERMITS FOR WIRELESS FACILITIES IF ANY SECTION OF THIS ORDINANCE IS FOUND TO BE VOID.

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

APPROVED by the City Council at their meeting of \_\_\_\_\_  
May 12, 1997.

  
\_\_\_\_\_  
Harwood T. Edvalson

## WIRELESS COMMUNICATIONS FACILITIES SITING POLICIES

### INTRODUCTION

The following siting policies are promulgated and adopted by the City Council of the City of Medina, acting with the advice and recommendations of the Medina Planning Commission. These policies have been designed to aid City Staff, City Consultants and wireless communication facility applicants in selecting appropriate sites and/or configurations. These policies are meant to supplement, and not to supersede, the Medina Zoning Code provisions that relate to wireless communications facilities. In the event of any conflict between these policies and the Medina Zoning Code, the provisions of the Medina Code shall govern. When used throughout these policies, the term "wireless communication facilities" include any and all transmitting or receiving antennas and all facilities upon which such antenna are mounted, including existing structures.

Traditional Zoning: Traditional zoning has concentrated on the preservation of property values. This has been done through measures such as minimum setback and maximum height restrictions which create some uniformity of appearance and prevent one residence from "over shadowing" its neighbors. Coverage restrictions are designed to prevent individual residences from dominating neighborhoods. All of these restrictions reduce the visual impact of allowed structures. The Federal Telecommunications Act (TCA) specifically preserved local zoning authority, with only limited exceptions.

Requirements of Federal Telecommunications Act: The TCA prevents cities from discriminating amongst "functionally equivalent providers". The FCC considers cellular, PCS, mobile radio, paging and enhanced mobil radio service providers all to be "functionally equivalent". These policies are designed to prohibit discrimination by requiring that all policies be applied to all providers. Despite industry contentions, the fact that the City has approved one or more facilities in the past does not mean that it must approve a similar facility for each potential provider. All that is required to avoid discrimination is that all providers be treated identically and subjected to the same rules. Similarly, the avoidance of discrimination does not mean that the City cannot change its requirements from time to time.

Historically, the City's Zoning Code and Comprehensive Plan have been subject to continuous review and modification, both major and minor. Non-discrimination is achieved by applying new standards uniformly to all permit applications after adoption. The TCA prohibits the City from banning wireless facilities. Accordingly, these policies are designed to provide adequate facilities for all anticipated providers.

City Attorney and Staff Comments: These siting policies have been prepared by the City Attorney and staff following review of numerous ordinances, from jurisdictions throughout the United States, and numerous articles by wireless providers and planning organizations. Portions of the policies will be incorporated into a new ordinance governing wireless communications facilities. Earlier drafts of these policies have been reviewed by the Medina Planning Commission. Their suggestions and comments have been incorporated into the current draft.

## 1. POLICY OBJECTIVES

1.1 Provision of Adequate Sites for Wireless Providers. These policies have been specifically designed to provide adequate sites for wireless telecommunications providers. In drafting these policies, prior input from an industry consortium describing the stated needs of the industry have been considered and additional information and suggestions have been solicited by the City at public hearings considering these policies.

1.2 Preservation of Character of City. Another primary objective of these siting policies is to maintain the existing residential character of the City of Medina and its neighborhoods.

1.3 Balancing. Despite significant public testimony that additional wireless communications services are not needed or desired within the City, these policies seek to balance the desires to provide adequate siting alternatives within the City, to comply with Federal law and to preserve the existing character and appearance of the City and its neighborhoods.

City Attorney and Staff Discussion: The needs of the wireless provider are based primarily upon the information provided by the consortium that addressed the Planning Commission and Council during several workshops. The primary identified needs were for facilities near the 520 corridor to serve the City and the 520 corridor and for additional

facilities, further south, to serve Medina citizens. Further evidence of the industry's needs and ability to serve Medina citizens has been provided through information submitted with the four recent applications for sites that have been filed with the City.

## 2. PUBLIC LANDS

2.1 Public Lands to Be Available. The siting of wireless facilities on public lands, including City rights-of-way and City buildings may be allowed, subject to the remaining provisions of these policies. The siting criteria relating to public lands relate only to land owned by the City of Medina and not to other publicly held lands such as school property.

2.2 Criteria for Use of Public Lands. The use of public lands is permitted, but only where the proposed facilities are consistent with existing uses of the land. Siting of facilities on public lands may be allowed where such siting will eliminate the necessity for siting on or near residential properties. All sites on public land must be approved both by the Planning Commission, through the special use permit process, and by the City Council, through approval of a lease agreement.

2.3 Required Demonstration of Need for Use of Public Lands. Before the use of public lands will be approved, the applicant must demonstrate a need for the proposed facility. In order to establish demonstrated need, the applicant must:

1. Establish an inability to provide service from available sites in neighboring jurisdictions; and
2. Establish an inability to provide the service from permitted locations on private non-residential property within the City limits; and
3. Establish that the facility is primarily designed to provide services to residents of the City and to others while within the city limits of Medina.

2.4 Term of Licenses. Licenses for use of City property for wireless communications facilities shall be annual, with provisions for four annual extensions at then current market values. Following four such extensions, the applicant must apply as if for a new facility.

City Attorney and Staff Comments: In some areas adjacent



to the 520 corridor, use of City property should avoid any claim that siting on residential properties is necessary. The avoidance of the use of residential property is the primary consideration for the use of public lands. Short term licenses are suggested. This is in keeping with the practice in the neighboring jurisdiction of Clyde Hill. This will allow the City to require that the best available technology be used on City property. The use of City property will also be governed by the policies contained in Section 4, concealment technology.

### 3. COMPENSATION FOR USE OF PUBLIC LANDS

3.1 Compensation. The Medina City Staff shall conduct a comprehensive survey to determine the reasonable market value for use of public lands. It is anticipated that reasonable compensation may differ based upon the length of lease allowed, the nature of the facility proposed, any impact of the facility upon existing uses of the public land and the usefulness of the facility in providing wireless services to the citizens of Medina.

3.2 Miscellaneous. It is anticipated that lower leasehold rates may apply to co-applicants who do not require separate or additional support structures such as towers. It is the intent of the City Council that the amount of compensation to be received from any wireless service provider shall not be considered by City staff, the Planning Commission or the City Council in approving or denying an application or lease. It is intent of the City Council that the primary consideration in approving an application for a wireless facility on public land shall be the avoidance of facilities on or near residential properties.

City Attorney and Staff Comments: This section is designed to make it clear that income is not even a consideration for approving or denying an application and that the primary reason for allowing public lands to be used is to avoid the placement on residential properties. Since very little is known about rates charged throughout the country, a survey may be quite useful.

### 4. CONCEALMENT TECHNOLOGY

4.1 Definition. "Concealment Technology" is defined as the use of both existing and future technology through which a wireless communications facility is designed to resemble an object other than a wireless communications facility, which is already present in the natural environment, such as a tree.

Examples of available existing technology include wireless facilities which are designed to closely resemble trees, street lights, telephone poles and similar objects. Existing technology also includes the use of small "panel" type antennas concealed behind fiberglass panels. Examples of concealment technology may be found in existing facilities in Medina at the Bellevue Christian School and in proposed facilities to be located in the Town of Clyde Hill by Sprint Spectrum, L.P. Additional concealment technology is available which allows installations to blend into their environment, including the use of existing or new vegetation to screen the facilities from observation from roadways and residences.

4.2 Concealment Technology for Equipment Shelters. All shelters for associated equipment needed for the operation of a proposed facility shall be located within an existing non-residential building or underground. Underground shelters shall not extend more than five inches (5") above the existing surface and shall be completely and immediately screened by approved vegetation. Underground shelters shall not be allowed where their presence would interfere with existing uses of public land, such as in established walking trails in City parks.

4.3 Advances in Technology. All applicants must agree to apply any readily available and applicable advances in technology to all existing facilities. For example, if technology becomes available to reduce or eliminate equipment noise from underground shelters, all facilities which have underground shelters shall put the new technology into effect within three (3) months.

City Attorney and Staff Comments: "Concealment Technology" is another term for what has commonly referred to as "Stealth Technology". Technology is readily available, especially at the maximum heights allowed under our zoning regulations, which will make wireless communication facilities difficult for any but the most sophisticated observers to identify. Significant evidence has been presented before the Planning Commission that wireless facilities which are easily recognized as such have a substantial negative impact on the property values of all residences in their immediate vicinity. Evidence also exists that antennas that are not readily recognizable as antennas have less negative affect on property values. These include the two existing cellular facilities in Medina, one of which is concealed as part of the structure of the Bellevue Christian School and the other one of which is hidden from view.

## 5. TESTING AND TESTING PROTOCOL

5.1 Testing Required. All existing and future wireless communications facilities shall be tested, not less frequently than annually, to determine if the facilities are in compliance with all applicable federal, state and local regulations. Facilities that are in existence at the time these policies are adopted shall be tested within three (3) months after the testing procedures or protocols have been adopted as herein provided. All such testing shall be under City direction and control, at the expense of the applicant.

5.2 Testing Procedures or Protocols. The City Manager is directed to obtain information on testing procedures or protocols and to submit his recommendation for adoption of a specific procedure or protocol. The City Manager's recommendation shall be based upon the availability and efficiency of the various procedures and protocols that he becomes aware of.

5.3 Regulations. All existing and future wireless communications facilities must comply with all regulations imposed by federal law or FCC regulations. In addition, all wireless communications facilities must comply with any state or local laws or regulations now or hereafter adopted.

5.4. Cooperation. Existing and future wireless service providers shall cooperate with the City in performing the testing required by this policy.

City Attorney and Staff Comments: At the present time, the FCC does not measure any radio emissions. They do not even require actual field measurements. Their approval of a facility is based on projections or computer generated estimates of the nature and strength of transmissions. There are a number of existing protocols described in the literature. The most controversial is "Cobb's Protocol". The Cobb's Protocol does appear to be more extensive than required as it seeks to measure all radio frequency transmissions both before and after installation of a facility. A more reasonable testing procedure might be limited to measurement of transmissions at the frequency expected to be generated by the proposed facility. It is anticipated that measurements should be taken both before and after installation of the facility. The policies give discretion to the City Manager to establish appropriate test procedures and to make appropriate changes, from time to time, based upon advice from city consultants, the industry, the Planning Commission or the City Council. It is anticipated that the City will hire a

consultant to make recommendations on testing procedures and to do the testing.

## 6. CO-LOCATION

6.1 Co-Location on Public Lands. Co-location on public lands is encouraged.

6.2 Co-Location on Private Lands. Co-location on private land is encouraged.

City Attorney and Staff Comments: Co-location is generally encouraged. As the Planning Commission has indicated its willingness to consider all applications, even "minor" applications, the review process has not been changed for co-located facilities. The requirement for the use of concealment technology may eliminate the possibility of co-location in the immediate future. Hopefully, future technology will make co-location possible.

## 7. DURATION OF PERMITS FOR WIRELESS COMMUNICATIONS FACILITIES

7.1 Length: The duration of a permit for a wireless facility shall be established by the Medina Planning Commission at the time that an application is approved. The length that a permit shall remain in effect shall be not less than one (1) year and not more than five (5) years after the facility has been constructed and put into actual use.

7.2 Considerations Governing Length. In establishing the length of a permit, the Planning Commission may consider all information on this subject provided by the wireless communication provider and all others. The Planning Commission may also require any independent analysis that it deems necessary.

City Attorney and Staff Comments: The duration of wireless permits is a fairly complex issue. Under Medina ordinances prior to 1996, all special use permits were good for an indefinite period of time. Under the 1996 ordinance governing wireless facilities, the duration was set at five (5) years with an indication that any request for renewal would have to demonstrate use of currently available technology. As written, Policy 7.1 would allow the Planning Commission to award permits for periods of as little as one (1) year. This is consistent with permits that are granted in the neighboring town of Clyde Hill. The maximum term of years is consistent with the draft WSDOT policies for facilities in State rights-of-way. Permits for facilities on City property

are limited to one year under policy 2.4. Limiting the lengths of terms of licenses will allow the Planning Commission to require the implementation of new technologies as they become available.

#### 8. REQUIREMENT TO DEMONSTRATE NEED FOR FACILITY

8.1 Need for Facility to Provide Service to Medina Residents. All applicants shall be required to submit satisfactory evidence that the facility is designed for and will provide services primarily for residents of the City of Medina and/or visitors within City limits.

8.2 Information Required. All applications shall be accompanied with all information required to establish:

1. A need for local services;
2. The methods of design or construction of facilities to be used to provide local service;
3. Coverage studies demonstrating the design and ability of the proposed facility to provide local services as well as the neighboring or regional facilities with which the proposed facilities will or can communicate.

8.3 Additional Considerations. Applicants may submit applications for facilities which are primarily designed to provide services for persons outside of City limits. All such applications must demonstrate:

1. The need for the applicant to complete a network of regional services;
2. The ability of the applicant to provide services to Medina residences using other facilities, either existing or planned, within or without the City limits of Medina;
3. The inability of the applicant to fulfill the need for the facility with sites available in other jurisdictions.

City Attorney and Staff Comments: Section 8 is a new concept. It is supported by a written opinion from one of the attorneys for the wireless communications division of the FCC. This attorney's opinion is, in essence, that cities are not required to allow facilities which are primarily designed to serve persons or locations outside of the city limits. It is also significant that antennas which are only or primarily

designed to provide services to nearby residences will not require the same height as antennas designed to service areas in Bellevue or on the other side of Lake Washington. This policy is also supported by the information provided to us by the industry representatives. At several joint workshops of the Planning Commission and City Council it was repeatedly said that the only reason they would want to site facilities in Medina would be to provide services to Medina citizens and that these facilities were only required due to Medina's topography.

## 9. PROCESS FOR AMENDMENT OF WIRELESS COMMUNICATION POLICIES

9.1 Initiation of Amendments. The Planning Commission and the City Manager may propose amendments to the wireless communication policies at any time.

9.2 Adoption of Amendments. Any citizen may propose amendments to existing policy, or implementation of additional policy statements, by submitting the proposed amendment to the Medina City Manager. The City Manager shall schedule all proposed amendments for consideration by the Medina Planning Commission which may recommend approval. Only those proposed amendments or additions which are recommended to the City Council by the Planning Commission will be considered for adoption.

City Attorney and Staff Comments: It is anticipated that these policies and the ordinance which will be drafted to reflect these policies will need to be amended from time to time. Policy No. 9.1 allows amendments to be proposed by the Planning Commission or by the City Manager. Consultant recommendations for changes could be forwarded through either the Planning Commission or the City Manager. Policy No. 9.2 makes the Planning Commission a screening agency so that only proposals which make sense to the Planning Commission will be sent on to the Council.

## 10. SETBACK

10.1 All wireless facilities shall be located not less than five hundred feet (500') from the nearest residentially developed properties.

City Attorney and Staff Comments: Once again, the need arises for balancing conflicting interests. Those persons who are primarily interested in preserving property values want the greatest setback possible from residential structures, arguing that any wireless antenna, even when using concealment

technology, will have a substantial adverse impact on property values for all residences in sight of the facility, or even for all residences in the vicinity of the facility. Those who wish enhanced wireless communications want setbacks that will allow for adequate facilities in their neighborhoods to give them the services they desire. At the request of the Planning Commission and City Council, the staff has attempted to set the maximum setback which will still provide adequate areas for wireless providers to site facilities in locations where they will have the least adverse impact upon the neighboring residences. The proposed five hundred foot (500') setback is a compromise. Although many citizens would argue that it is inadequate, when it is combined with the requirement for the use of concealment technology, we believe that a five hundred foot (500') buffer or setback zone is adequate to protect residential property values.

The wireless industry is expected to argue that the buffer zone eliminates their ability to provide quality services to the citizens of Medina. In recommending this buffer zone, staff has taken into consideration the information presented to the joint City Council/Planning Commission workshops conducted in February and March of 1996. In the workshops, industry representatives indicated a need for facilities to serve the 520 corridor and to serve the Medina "bowl". With a five hundred foot (500') buffer zone, facilities can be located in the central portion of Overlake Golf and Country Club and along the 520 corridor. The facilities along or in the 520 corridor will be shielded from residential views to the north by the thickly forested nature preserve and from residential views to the south by the Bellevue Christian School.

The five hundred foot setback, combined with the use of concealment technology, is designed to substantially reduce the adverse aesthetic impact of antenna facilities.

#### 11. HEIGHT

The current height limit of thirty five feet is reaffirmed.

City Attorney and Staff Comments: Height limitations also involve the balancing of competing interests. Taller towers allow for greater coverage, theoretically reducing the number of towers that might be necessary. On the other hand, taller towers have greater visual impact. They are visible from more areas within the City and are more likely to be recognized for what they are, receiving and transmitting

antennas.

When new providers enter a market, they want to seek the highest towers possible in order to give them adequate coverage. Once their system has been developed and they start to acquire new customers, they need additional, shorter facilities to increase capacity. As the customer base grows and more capacity installations are put into place, the initial, taller antennas will cause interference and must be reduced in height. In some areas of the country, especially California, the initial coverage installations have been abandoned in place. Because there is no readily assessable way of knowing whether a facility is in actual operation, even those communities which require the removal of abandoned facilities have been unable to enforce compliance.

#### 12. ASSIGNMENT AND SUBLEASING

12.1 No facility, site or permit may be sold, transferred or assigned unless and until the assignee obtains a permit for the facility.

12.2 No sublease shall be entered into by any provider until the sublessee has obtained a permit for its facility.

12.3 No potential provider shall be allowed to argue that a permit should issue for an assigned or subleased facility on the basis of any expense incurred in relation to the facility.

#### City Attorney and Staff Comments:

Many of the initial, taller, coverage antennas, rather than being abandoned as discussed in Section 11, have been assigned or subleased to new entrants into the market place or non-competing wireless providers, such as paging companies. Allowing subleases or assignments without requiring that the full permitting process be followed could result in the retention of outmoded coverage facilities. In some cases, it may only be easier or cheaper for a provider to use an existing facility rather than taking advantage of developing technology which might not require the height of the existing facility. Requiring complete review will allow these issues to be considered by the Planning Commission.

#### 13. APPLICATION

13.1 These policies shall apply to all wireless facilities located anywhere within the City of Medina.



13.2 These policies shall apply to both privately and publicly owned land, including land owned by the City, by the State, by utilities and by school districts.

City Attorney and Staff Comments: The Council has clearly stated its intention to apply these policies in the subsequently enacted ordinance to all land within the City. In particular, the 520 corridor which is owned by the State of Washington. Although it is not clear the extent to which local zoning regulations can govern facilities located upon State land, it is the clear intent of the Council to impose such regulations, at least as to wireless facilities, to the greatest extent possible. Such policies as the use of concealment technology and minimum setbacks from residential property will not prevent the State from making reasonable use of its property within the 520 corridor and will not prevent wireless communications providers from being able to site adequate facilities within this corridor.

The Washington State Department of Transportation recently released interim policies for siting wireless facilities on WSDOT properties. The current draft does not address local zoning regulations. A reasonable effort should be made to encourage WSDOT to require compliance with local zoning regulations, at least those which specifically address wireless communications facilities.

#### 14. PERMIT FEES

14.1 Basic Fee: The basic permit fee, to be charged at the time of application, shall be \$5,000. Except as modified in Section 12.4, the basic permit fee shall be required for each installation, whether or not more than one installation is sought under a single application.

14.2 Applications for Multiple Installations: The City Planning Commission should have the authority to reduce the number of permit fees charged for multiple installations under one application when the installations are deemed "minor". Minor installations shall only include facilities that are exempt from FCC regulations. Minor installations shall only include such installations as the City Planning Commission deems to be insignificant in terms of aesthetic impact upon the surrounding neighborhood.

14.3 Consultants Fees: In addition to the permit fee, the wireless service provider must pay all fees incurred by the City for review of the proposal by City consultants at the

rate charged by said consultants. The basic fee shall not be deducted from the consultant fees to be paid by the applicant. The applicant may be required, from time to time, to pre-pay an estimated fee for consultants' charges.

City Attorney and Staff Comments: The fee for the application is designed to recoup the past and future costs incurred by the City in regulating wireless facilities. This includes the cost of preparing past and future policies, regulations and ordinances. Because of the quickly developing technology in this area, the usual sources of information relied upon by the City are often months or years behind. The City has incurred substantial expenses to date and is likely to incur substantial expenses in the future in regulating wireless communication facilities. The City's expenditures have been greater than they should have been due to the failure of some of the applicants before the City to provide the City with accurate and reliable information. This has caused the need for City consultants to research available technology in order to evaluate the actual need for some of the proposals sought to be sited within the City. The amount of the basic fee proposed by the staff may well be less than one half of the amount necessary to recoup past and future charges incurred by the City.

The City Manager has estimated that new applicants would have to pay a fee ranging from \$5,000 to \$7,500 in order for the City to recoup its past and anticipated costs, based on the estimated number of applicants. We have chosen to begin by charging at the lower end of that range. Staff will recommend changes if the fee proves to be either inadequate or excessive. Fees greatly in excess of \$5,000 are being charged around the nation.

The City has been approached by one provider, Metricom, seeking permission to locate relatively small antenna facilities on light posts. Metricom indicated that it would need six to eight installations to adequately serve the entire City. As the cumulative aesthetic impact of these facilities may be less than a single free standing facility, we are recommending that the Planning Commission be authorized to just charge one license fee for all of the facilities sought under a single application. It is not intent of these policies to allow more than one facility to be licensed under the single application unless they are deemed to be minor facilities by both the FCC and the City Planning Commission.

The policy proposes to charge actual consulting costs incurred by the City in addition to the basic fee. This would only include consulting costs that are directly related to a particular application. This is consistent with the City's

general policy for land use application fees. The City attempts to keep the application fee at a minimum and adds to the application fee actual costs incurred from consultants, including the City Planner, the City Engineer and City Attorney. Applicants who submit complete applications with all necessary reporting data will incur relatively minor consulting costs. It is the applicants who submit incomplete applications and incorrect data that will incur more substantial consulting costs. This appears more fair than just increasing the basic fee to an amount that would include all consulting costs forcing those who submit complete applications to pay a portion of the consulting costs generated by those who submit incomplete applications.

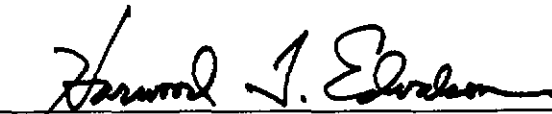
15. SAVINGS CLAUSE

15.1 In the event that any existing or future policy, or any portion thereof, is held to be invalid for any reason by a court of competent jurisdiction, all remaining policies shall remain in full force and effect.

ADOPTED by the Medina City Council this 14th day of April, 1997.

  
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Susan Potts, Mayor Pro Tem

Attest:

  
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Woody Edvalson, City Clerk

Approved as to form:

  
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Kirk R. Wines, City Attorney

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