Agenda
Planning Commission Meeting
Wednesday, June 24, 2015
City Hall Council Chamber | 505 Swift Boulevard

Commission Members: Chair Madsen, Vice-Chair Boring and Commissioners Berkowitz, Clark, Palmer, Wallner and Wise

Liaisons: Council Liaison Lemley
Staff Liaison Planning and Development Services Manager Simon

Regular Meeting - 7:00 p.m.

Welcome and Roll Call

Approval of Agenda: (Approved by Motion)

Approval of Minutes: (Approved by Motion)

Public Comments:

Public Hearing Explanation:

Unfinished Business - Public Hearing:

New Business – Public Hearing:

1. Public Hearing - 2016 Community Development Block Grant (CDBG)/HOME Funds
2. Public Hearing - Consider Zoning Code Amendments Regarding Modifications to Existing Wireless Communication Facilities (RMC 23.62)

Communications:

Adjournment

The next Planning Commission Workshop is July 8, 2015

The next Planning Commission Meeting is July 22, 2015

This Meeting is broadcast live on CityView Channel 192 and online at CI.RICHLAND.WA.US/CITYVIEW

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PLANNING COMMISSION AGENDA ITEM COVERSHEET

Meeting Date: 06/24/2015 Agenda Category: New Business – Public Hearing

Prepared By: Michelle Burden, Housing Resources Specialist

Subject:
Public Hearing - 2016 Community Development Block Grant (CDBG)/HOME Funds

Request:
Key 7 - Neighborhoods & Community Safety

Recommended Motion:
No action required.

Summary:
The purpose of the Public Hearing for 2016 CDBG funds is to allow for public comment on community needs.

Attachments:

PLANNING COMMISSION AGENDA ITEM COVERSHEET

Meeting Date: 06/24/2015 Agenda Category: New Business – Public Hearing

Prepared By: Rick Simon, Development Services Manager

Subject:
Public Hearing - Consider Zoning Code Amendments Regarding Modifications to Existing Wireless Communication Facilities (RMC 23.62)

Request:
Key 1 - Financial Stability & Operational Effectiveness

Recommended Motion:
Move to recommend approval of the proposed amendments to Chapter 23.62 of the Richland Municipal Code relating to wireless communication facilities.

Summary:
The attached report provides a summary of proposed amendments to Chapter 23.62 of the Richland Municipal Code relating to wireless communication facilities. The draft amendments are attached as a separate exhibit.

Attachments:

1. Staff Report
2. Draft Amendments - RMC Chapter 23.62

STAFF REPORT

TO: PLANNING COMMISSION PREPARED BY: RICK SIMON
FILE NO.: Z2015-106 MEETING DATE: JUNE 24, 2015

GENERAL INFORMATION:

APPLICANT: CITY OF RICHLAND Z2015-106

REQUEST: TEXT AMENDMENTS TO CHAPTER 23.62 – WIRELESS COMMUNICATION FACILITIES

LOCATION: CITYWIDE

REASON FOR REQUEST:

Federal law concerning wireless communication facilities has been amended and mandates changes to the City's regulations.

FINDINGS AND CONCLUSIONS
Staff has completed its review of the proposed amendments to the city's wireless communication facilities regulations and submits that:

1. Chapter 23.62 of the RMC regulates the placement of wireless communication facilities and has been administered by the City without amendment since 2005;

2. Congress, through the adoption of Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 created new requirements for local government concerning wireless communication facilities, which mandate that local government approve requests for modifications to existing wireless towers and base stations that do not substantially change the physical dimensions of such towers or base stations;

3. The City's existing code does not contain adequate provisions to implement the mandates of Section 6409;

4. The proposed amendments to RMC Chapter 23.62 would update the City's code to fully implement the requirements of the federal mandates as contained in Section 6409;

5. Based upon the above findings and conclusions, the adoption of the City's amendments to Chapter 23.62 of the Richland Municipal Code – Wireless Communication Facilities is in the best interest of the community of Richland.

RECOMMENDATION

Staff recommends the Planning Commission concur with the findings and conclusions set forth in Staff Report (Z2015-106) and recommend to the City Council adoption of the proposed amendments to Chapter 23.62 of the Richland Municipal Code – Wireless Communication Facilities.

ATTACHMENTS

A. Supplemental Information
B. Draft Amendments to RMC Chapter 23.62.

ATTACHMENT A
(Z2015-106)

SUPPLEMENTAL INFORMATION

EXISTING CODE

The current City code classifies wireless communication facilities into three classes as follows:

Micro-facilities are antennas that are less than 4 feet in height or dishes that are less than one foot in diameter. They are attached to other structures and are permitted in all zoning districts within the City.

Macro-facilities are antennas that are less than 15 feet in height or dishes that are less than one meter in diameter. They are attached to other structures and are permitted everywhere except in residential districts.

Monopoles are vertical support structures designed to support antennas and/or dishes. They also include lattice towers. Monopoles are allowed as either permitted uses or allowed through the issuance of a special use permit depending upon their height and the zoning district that they would be located in. Monopoles are not permitted within residential districts but can be permitted in Parks and Public Facilities zoning up to 80 feet in height through a special use permit. The more intensive commercial and industrial zones allow for monopoles up to 150 feet in height. The code establishes standards for the treatment of equipment shelters, setbacks from residential properties and requires monopoles to provide for co-location of wireless equipment. Applicants for special use permits are required to demonstrate that there are no other suitable lower locations that would accommodate their needs.

FEDERAL MANDATES

The federal legislation mandates that local governments allow changes to existing towers and base stations that do not substantially change the physical dimensions of the tower or base station. Substantial change is defined in the legislation as modification that meets any of the following criteria:

- For towers outside public rights of way:
    - Increases height by more than 20 feet or 10 percent, whichever is greater;
    - Protrudes from edge of tower more than 20 feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater;

- For towers in public rights of way and for all base stations:

    - Increases height of tower or base station by more than 10 percent or 10 feet, whichever is greater;
    - Protrudes from the edge of the structure more than 6 feet;

- Involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;

- Entails any excavation or deployment outside the current site of the tower or base station;

- Would defeat existing concealment elements of the tower or base station; or

- Does not comply with conditions associated with the prior approval of the tower or base station unless 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.

Other requirements of the federal legislation mandate that local government determine if applications for tower modifications fit within the definition of substantial change in a timely manner. If a local government does not complete its determination within 60 days, then the application is deemed approved.

ANALYSIS

The attached draft amendments would implement the Section 6409 requirements by including a detailed definition of substantial change and by implementing a process for the review of requests for modification to existing wireless communication facilities. There are no other amendments proposed to the code other than those directly needed to implement the federal requirements.

SUMMARY

The proposed amendments to the City's regulations pertaining to wireless communication facilities are necessary to comply with the federal mandates contained in Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act of 2012.

Chapter 23.62 WIRELESS COMMUNICATIONS FACILITIES

Sections:

23.62.010 Purpose.
23.62.020 Definitions.
23.62.030 Development standards for microfacilities.
23.62.040 Development standards for macrofacilities.
23.62.050 Development standards for monopoles and lattice towers.
23.62.060 Permitted zones for monopoles and lattice towers.
23.62.070 Special use permit criteria for monopoles and lattice towers.
23.62.080 Prohibited support structures.
23.62.090 Exemption.
23.62.100 Obsolescence.
23.62.110 Eligible Facilities Modification Requests.

23.62.010 Purpose.

The wireless communications facilities chapter is to minimize the unsightly characteristics associated with wireless communications facilities and to provide for a wide range of locations and options for wireless communications providers and to encourage creative approaches in locating wireless communications facilities, which will blend in with the surroundings of such facilities. [Ord. 28-05 § 1.02].

23.62.020 Definitions.

For the purpose of this chapter certain terms and words are defined as follows:

“Accessory antenna device” is an antenna including, but not limited to, test mobile antennas and global positioning (GPS) antennas, which are less than 12 inches in height or width, excluding the support structure.

“Antenna” is any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals.

A. Omni-directional antenna (also known as whip antenna) transmits and receives radio frequency signals in a 360-degree radial pattern. For the purpose of this chapter, an omnidirectional antenna is up to 15 feet in height and four inches in diameter.

B. Directional antenna (also known as panel antenna) transmits and receives radio

frequency signals in a specific directional pattern of less than 360 degrees.

C. Parabolic antenna (also known as dish antenna) is a bowl-shaped device for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.

D. Antenna Array. An antenna array is two or more devices used for the transmission or reception of radio frequency signals, microwave, or other signals for commercial communications purposes.

"Antenna mount" means any mounting device or bracket that is used to attach an antenna or antenna array to a monopole, lattice tower, building, or other structure.

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

A. 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.

B. 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).

C. Any structure other than a tower that, at the time an Eligible Facilities Modification Application is filed with the Development Services Department under this Chapter, supports or houses equipment described in paragraphs A and B above, 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.

D. *The term does not include any structure that, at the time a completed Eligible Facilities Modification Application is filed with the Development Services Department under this chapter, does not support or house equipment described in paragraphs A, B, and C above*.

"Attached wireless communications facility" is a wireless communications facility that is affixed to an existing structure.

"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.

"Co-location" exists when more than one wireless communications provider mounts

equipment on a single support structure. Co-location can also exist when more than one carrier constructs more than one support structure on a single, relatively small parcel of land.

“Equipment shelter or cabinet” is a room, cabinet, or building used to house equipment for utility or service providers.

“*Eligible Facilities Request” shall mean 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:*

A. *Collocation or new transmission equipment;*

B. *Removal of transmission equipment; or*

C. *Replacement of transmission equipment.*

“Eligible support structure” shall mean and refer to a tower or base station as defined in this chapter, provided that it is existing at the time the Eligible Facilities Modification Application is filed with the Development Services Department under this chapter.

“Existing” shall mean a constructed tower or base station that has been reviewed and approved under applicable City zoning or permitting processes, or reviewed and approved under other State, county or local regulatory review processes.

“Guyed tower” is a wireless communications support structure, which consists of metal crossed strips or bars and is steadied by wire guys in a radial pattern around the tower.

“Lattice tower” is a wireless communications support structure, which consists of metal crossed strips or bars to support antennas and related equipment.

“Macrofacility” is an attached commercial wireless communications facility, which consists of antennas equal to or less than 15 feet in height or a parabolic antenna over one meter in height.

“Microfacility” is an attached commercial wireless communications facility which consists of antennas equal to or less than four feet in height and with an area of not more than 480 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot) as viewed from any one point. The permitted antenna height includes the wireless communications facility support structure.

“Monopole” means a vertical support structure consisting of a single vertical metal, concrete or wooden pole, typically round or square and driven into the ground or attached to a foundation.

“Related equipment” is all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such reception may include, but is not limited to, cable,

conduit, and connectors.

"Site" shall mean, other than for towers in the public rights-of-way:

A. *The current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site;*

B. *The area for other eligible support structures further restricted to that area in proximity to the structure; and*

C. *Other transmission equipment already deployed on the ground.*

"Substantial Change" shall mean a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

A. *For towers not in the public rights-of-way, it increases the height of the tower by more than 10% or by more than twenty feet, whichever is greater;*

B. *For towers not in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty 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;*

C. *For towers located within the public rights-of-way, it increases the height of the tower by more than 10% or by more than 10 feet, whichever is greater;*

D. *For towers located within the public rights-of-way, it involves adding an appurtenance to the body of the tower than would protrude from the edge of the tower more than 6 feet;*

E. *For any eligible support structure, it involves the 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 the installation of any new equipment cabinets 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 cabinet associated with the structure.*

F. *It entails any excavation or deployment outside of the current site;*

G. *It would defeat the concealment elements of the eligible support structure; or*

H. *It does not comply with the conditions associated with the permitting 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 A thru G of this definition.

I. A determination of whether a proposed modification to an eligible support structure qualifies as a substantial change shall be based on the height and configuration of the eligible support structure at the time of this ordinance adoption, which is ____, 2015, regardless of any modifications that may have taken place to the eligible support structure after _____, 2015.

"Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site. The term includes "Guyed Tower," "Lattice tower," and "Monopole" as defined in this Chapter.

"Transmission Equipment" means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated wireless communication 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.

"Transmission tower" is a freestanding structure, other than a building, on which communications devices are mounted. Transmission tower may serve either as a major or minor communications facility. Examples include, but are not limited to:

A. Monopoles;

B. Lattice towers; or

C. Guyed towers.

"Wireless communications facility" is an unstaffed facility for the transmission and reception of low- power (under 500 watts) radio signals consisting of an equipment shelter or cabinet, a support structure, antennas (e.g., omnidirectional, panel/directional or parabolic) and related equipment.

"Wireless communications support structure" is the structure erected to support wireless communications antennas and connecting appurtenances. Support structure types include, but are not limited to, stanchions, monopoles, lattice towers, wood poles or guyed towers. [Ord. 28-05 § 1.02].

23.62.030 Development standards for microfacilities.

A. Microfacilities are permitted in all zones.

B. The microfacility shall be located on existing buildings, poles or other existing support structures. They shall not be allowed on buildings which are designated as solely residential. The microfacility may locate on buildings and structures which contain mixed uses (e.g., residential and commercial or other uses located with residential uses); provided, that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.

C. Antennas equal to or less than four feet in height and with an area of not more than 480 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel as viewed from any one point) are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height may be used for omnidirectional antennas, providing they do not extend more than four feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

D. The shelter or cabinet, if necessary, used to house radio electronic equipment shall be contained wholly within a building or structure, otherwise appropriately concealed, camouflaged or located underground.

E. In the suburban agricultural (SAG), single-family residential – 12,000 (R-1-12), single-family residential – 10,000 (R-1-10), medium-density residential (R-2) and medium-density residential small lot (R-2S) zones, microfacilities shall be separated from each other by a distance equal to or greater than 1,200 linear feet. [Ord. 28-05 § 1.02].

23.62.040 Development standards for macrofacilities.

A. Macrofacilities are permitted in all zones except suburban agricultural (SAG), single-family residential – 12,000 (R-1-12), single-family residential – 10,000 (R-1-10), medium-density residential (R-2) and medium-density residential small lot (R-2S) zones.

B. Macrofacilities shall not be allowed on buildings which are designated as solely residential. Macrofacilities may locate on buildings and structures which contain mixed uses (e.g., residential and commercial or other uses located with residential uses); provided, that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.

C. The shelter or cabinet, if necessary, used to house radio electronics equipment shall be concealed, camouflaged or underground.

D. Macrofacilities shall comply with the height limitations specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet,

panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Structures which are nonconforming with respect to height may be used for omnidirectional antennas, providing they do not exceed 15 feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. [Ord. 28-05 § 1.02].

23.62.050 Development standards for monopoles and lattice towers.

A. All monopoles and lattice towers exceeding 60 feet in height shall be designed to accommodate two or more wireless communications facilities.

B. Macrofacilities are the largest wireless communications facilities allowed on a monopole or lattice tower. Antennas not exceeding 15 feet in height which extend above the wireless communications support structure shall not be calculated as part of the height of the wireless communications support structure.

C. On monopoles, antennas and antenna arrays together with any associated antenna mount shall be designed utilizing the narrowest dimensions possible, and in no instance shall they extend further, as measured horizontally, from the centerline of the monopole than a distance of 15 feet.

D. On lattice towers, antennas and antenna arrays together with any associated mounts shall extend no further, as measured horizontally, than 15 feet from the portion of the lattice tower to which the antennas are mounted.

E. Co-location on an existing support structure shall be permitted.

F. The shelter or cabinet, if necessary, used to house radio electronics equipment and the associated cabling connecting the equipment or cabinet to the monopole or lattice tower shall be concealed, camouflaged or underground.

G. When a monopole or lattice tower is adjacent to a suburban agricultural (SAG) single-family residential – 12,000 (R-1-12), single-family residential – 10,000 (R-1-10), medium-density residential (R-2), medium-density residential small lot (R-2S) or multiple-family residential (R-3) zoning district, the wireless communications support structure must be set back a distance equal to twice the height of the wireless communications support structure from the nearest residential lot line.

H. All monopoles and lattice towers shall be lighted and painted, if necessary, in accordance with Federal Aviation Administration regulations. [Ord. 28-05 § 1.02].

23.62.060 Permitted zones for monopoles and lattice towers.

A. Monopoles up to 80 feet in height are considered a permitted use in the General Business (C-3), Business Research Park (B-RP), Medium Industrial (I-M), and Heavy Manufacturing (M-2) zoning districts. Monopoles up to 80 feet in height may be permitted in the Parks and Public Facilities (PPF), Business Commerce (B-C), Central Business District (CBD) and Retail Business (C-2) zoning districts subject to issuance of a special use permit as set forth in RMC 23.62.070.

B. Monopoles between 80 feet and 150 feet in height are considered a permitted use in the Business Research Park (B-RP), Medium Industrial (I-M), and Heavy Manufacturing (M-2) zoning districts. Monopoles between 80 feet and 150 feet in height may be permitted in the Parks and Public Facilities (PPF), General Business (C-3) and Business Commerce (B-C) zoning districts subject to issuance of a special use permit as set forth in RMC 23.62.070.

C. Monopoles over 150 feet in height may be permitted in the Business Research Park (B-RP), Medium Industrial (I-M) and Heavy Manufacturing (M-2) zoning districts subject to issuance of a special use permit as set forth in RMC 23.62.070.

D. Lattice towers up to 150 feet in height are considered a permitted use in the Medium Industrial (I-M) and Heavy Manufacturing (M-2) zoning districts.

E. Lattice towers over 150 feet in height may be permitted in the Medium Industrial (I-M) and Heavy Manufacturing (M-2) zoning districts subject to issuance of a special use permit as set forth in RMC 23.62.070. [Ord. 28-05 § 1.02; Ord. 32-11 § 18].

23.62.070 Special use permit criteria for monopoles and lattice towers.

Requests for special use permits shall be considered in accordance with the provisions of Chapter 23.46 RMC. In addition to the provisions of Chapter 23.46 RMC, the following specific criteria shall be met before a special use permit can be granted.

A. Visual Impact.

1. Antennas may not extend more than 15 feet above their supporting structure, monopole, lattice tower, building or other structure.

2. Site location and development shall preserve the pre-existing character of the surrounding buildings and land uses and zone district to the extent consistent with the function of the communications equipment. Wireless communications towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

3. Accessory equipment facilities used to house or contain wireless communications equipment should be located within buildings when possible. When they cannot be located in buildings, equipment shelters or cabinets shall be screened and landscaped.

4. All monopoles and lattice type facilities shall be screened with trees, shrubs and landscaping planted in sufficient depth to form an effective and actual sight barrier within five years. Said landscaping shall have a minimum mature height of eight feet.

B. Noise. No equipment shall be operated so as to produce noise in levels above 45 dBa as measured from the nearest property line on which the attached wireless communications facility is located.

C. Availability of Suitable Existing Towers or Other Structures. Applications for a special use permit shall reasonably demonstrate that alternatives such as lower structures that are permitted without special use permit or other existing support structures are not capable of accommodating the applicant's needs. Evidence and information shall be submitted to establish the following:

1. Permitted shorter support structures are not of sufficient height to meet the applicant's engineering requirements.

2. No existing support structures are located within the geographic area required to meet the applicant's engineering requirements.

3. Existing support structures do not have sufficient structural strength to support the proposed antenna and related equipment.

4. The applicant's antenna would cause electromagnetic interference with antennas on the existing support structures, or the antenna on the existing support structures would cause interference with the applicant's proposed antenna.

5. The fees, costs, or contractual provisions required in order to share or adapt an existing support structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable. [Ord. 28-05 § 1.02].

23.62.080 Prohibited support structures.

Guyed towers are prohibited for use as a wireless communications facility support

structure. [Ord. 28- 05 § 1.02].

23.62.090 Exemption.

The following is exempt from the requirement of a special use permit, and shall be considered a permitted use in all zones where wireless and attached wireless communications facilities are permitted: ~~minor~~ modifications of existing wireless communications and attached wireless communications facilities~~, whether emergency or routine, provided there is little or no change in visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this chapter. [Ord. 28-05 § 1.02].~~ in conformance with the requirements of an Eligible Facilities Modification Request as required in Section 23.62.110 of this Chapter.

23.62.100 Obsolescence.

A wireless communications facility or attached wireless communications facility shall be removed by the facility owner within six months of the date if ceased to be operational or if the facility falls into disrepair. [Ord. 28-05 § 1.02].

23.62.110 Application Review and Approval of Eligible Facilities Modification Requests.

A. Application. The Development Services Department shall prepare and make publicly available an application form which shall be limited to the information necessary for the Development Services Department to consider whether an application is an Eligible Facilities Modification 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 Modification Request pursuant to this Chapter, the Development Services Department shall review such application to determine whether the application so qualifies.

C. Time Frame for Review. Within sixty (60) days of the date on which an applicant submits application seeking approval under this Chapter, the Development Services Department shall approve the application unless it determines that the application is not covered by this Chapter.

D. Tolling of the Timeframe for Review. The sixty (60) day review period begins to run when the application is filed with the Development Services Department, and may be tolled only by mutual agreement by the Development Services Department and

the applicant, or in cases where the Development Services Department Manager 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 provide a written notice to the applicant within thirty (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 ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of a second or subsequent notices pursuant to the procedures identified in the 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 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 approved. The deemed approval does not become effective until the applicant notifies the Development Services Department in writing after the review period has expired (accounting for any tolling) that the application has been deemed approved.*

G. *Remedies. Applicants and the City may bring claims related to Section 6409(a) to any court of competent jurisdiction.*