ORDINANCE NO. 4318

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Title 6 of the Kent City Code by adopting a new chapter 6.16 establishing utility design standards and aesthetic requirements for infrastructure located within the right-of-way, including small cell equipment, and proprietary or leased poles and equipment attached to these poles.

RECITALS

A. Utility and telecommunication service providers often utilize city rights-of-way to deploy the facilities necessary to provide various services to the general public.

B. As wireless communication technology has continued to advance, requests from telecommunication service providers to utilize the city rights-of-way to install, construct and maintain facilities in new and different ways have increased.

C. The City embraces and supports small cell technology and the advances the City expects it to provide, yet also has a fundamental role to manage the rights-of-way to first protect the public safety and welfare and also to protect the City’s significant investments of time, resources and money in construction, design standards and undergrounding of utilities.

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D. These design standards and aesthetic requirements were crafted to address concerns regarding service providers deploying unsightly facilities that create traffic and sight distance hazards and would be incompatible with the character of the streetscape or neighborhood.

E. The City is committed to and encourages a safe, reliable, efficient, integrated and connected system of Complete Streets that promotes access, mobility and health for all people, regardless of their age, physical ability or mode of transportation. In particular, the City has determined that allowing small cell equipment on traffic control signal systems poses a risk to public safety and welfare. For example, deployment of small cell equipment or facilities on traffic control signal systems could impede or interfere with the operation of the traffic control signal system, negatively impact future traffic control signal system planning, or place additional burdens on city staff and resources in the event of vehicular collisions or weather-related events.

F. The City of Kent has expended significant time and resources developing streetscape design and construction standards in various parts of the City to ensure that specified areas have an attractive, yet cohesive look and feel. These standards were developed at great time and expense to help advance revitalization, create safer public spaces and generate a greater sense of community pride and economic vitality.

G. In order to balance the deployment of new technology with the City’s role to manage the rights-of-way and preserve the time, money and effort expended upon streetscape designs and standards, this new chapter establishes aesthetic requirements and design standards for small cell equipment and the proprietary and leased poles this equipment may be deployed upon. These standards and requirements are targeted to reduce the aesthetic harm and impact of the bulky equipment and wires that are a

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part of small cell equipment and to minimize visual clutter and public safety impacts.

H. It is also important for the City to address the aesthetic harms and impacts of non-wireless bulky equipment within the right-of-way. Accordingly, this chapter sets forth design requirements for utility poles directed toward reducing the overhead clutter caused by equipment installed on utility poles.

I. This chapter has been drafted to comply with the recently adopted Federal Communications Commission Declaratory Ruling and Third Report and Order (FCC 18-133), which limits local discretion to regulate the location of small cell equipment and facilities. Specifically, FCC 18-133 only allows aesthetic requirements that are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance. FCC 18-133 also requires that these standards be published within 180 days after the October 15, 2018 publication of the Order.

J. Staff provided an overview of the choices and decisions regarding the design of small cells on February 25, 2019 to the Public Works Committee.

K. On March 18, 2019, the Public Works Committee voted to recommend adoption of the proposed amendments to the City Council.

L. On March 19, 2019, at its regularly scheduled meeting, the City Council voted to set a public hearing for April 2, 2019 regarding the proposed code amendment related to design standards within the right-of-way.

M. On March 19, 2019, the City’s SEPA Responsible Official issued a Determination of Non-Significance for the proposed code amendment.
N. At its regularly-scheduled meeting on April 2, 2019, the City Council held a public hearing regarding the proposed code amendments and, after considering the matter, voted to adopt the amendments to Title 6 of the Kent City Code, adding a chapter establishing design standards for small cell equipment and other poles and facilities within the right-of-way.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - New Chapter. Title 6 of the Kent City Code is amended by adding a new chapter 6.16, entitled “Utility Design Standards in the Right-of-Way,” to read as follows:

CHAPTER 6.16

UTILITY DESIGN STANDARDS IN THE RIGHT-OF-WAY

Sec. 6.16.010. Purpose.

A. The City Council, as trustee of the City’s public right-of-way, has the authority to authorize right-of-way use by utilities and other entities in order to serve the public if an agreement consistent with state and federal law and the best interests of the city and its residents can be reached. The purpose of the design standards set forth within this chapter is to locate small cell equipment, utility poles and other infrastructure in the city’s rights-of-way in a manner that minimizes potential incompatibilities with adjacent uses, addresses traffic safety, limits bulk and minimizes aesthetic impacts.

B. The design standards within this chapter shall be considered concealment features when considering whether a proposed modification is
a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

**Sec. 6.16.020. Conflicting provisions.** In the event of a conflict between the provisions of this chapter, the terms of any issued franchise, or any federal law or federal regulation, it is intended that the stricter standard shall apply unless the context clearly evidences a contrary intent, or unless the city is preempted on the issue by applicable law. Should any franchise or other applicable law be silent on the issue of conflict, this section shall control.

**Sec. 6.16.030. Definitions.** The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. *City-owned infrastructure* means poles, street light standards or other street-related appurtenances located in rights-of-way and owned by the City of Kent.

B. *Combination Pole* means a pole which includes both a streetlight and small cell equipment or facilities that replaces existing city-owned infrastructure.

C. *Director* means the City of Kent public works director, or his or her designee.

D. *Franchise* refers to the authorization granted by the city to a utility or other service provider for the nonexclusive right to occupy city rights-of-way to provide service within a designated franchise area. A franchise shall be authorized by ordinance and must be accepted by the franchisee to become effective. A franchise shall not include or be a substitute for:
1. Any other permit or authorization required for the privilege of transacting and carrying on business within the city, including without limitation a business license; or

2. Any permit, agreement, or authorization required in connection with operations on or in public streets or property, including without limitation, a street cut permit, a street use permit, or other construction permit or approval; or

3. Any permits or agreements for occupying any other property in the city for which access is not specifically granted by the franchise, including without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the city or any other public or private entity, or for providing any service.

E. Rights-of-Way (singular Right-of-Way) means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, pathway, space, or other public right-of-way, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover. Rights-of-Way for the purpose of this chapter do not include railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, open spaces, nature trails, dedicated but un-opened right-of-way, undedicated streets and/or right-of-way, environmentally sensitive areas and any land, facilities, or property owned, maintained, or leased by the City in its governmental or proprietary capacity or as an operator of a utility.

F. Small cell equipment or facilities means wireless telecommunications facilities attached, mounted, or installed on a proprietary or leased pole,
excluding monopole towers, that is located in right-of-way and used to provide personal wireless service.

G. *Traffic control signal system* means traffic signal poles, mast arms, luminaires and associated mast arms, ancillary poles and related appurtenances.

H. *Utility Pole* means a pole or vertical structure owned by a utility company or other third party with the right either pursuant to state law or a franchise to place such facilities in the right-of-way. An “Original Utility Pole” is a pole that has not been replaced to accommodate Small Cell Facilities, but that is capable of accommodating Small Cell Facilities. A “Replacement Utility Pole” means a pole that replaces an Original Utility Pole to accommodate Small Cell Facilities and does not result in an increase in the total number of Utility Poles. Each reference to a Utility Pole herein includes any Original Utility Pole and any Replacement Utility Pole.

**Sec. 6.16.040. General Requirements.**

A. All poles and small cell equipment or facilities shall be constructed or installed according to applicable federal, state and city regulations and standards, including the City of Kent Design and Construction Standards.

B. Ground mounted equipment in the rights-of-way is prohibited, unless such facilities are placed underground.

C. Small cell equipment or facilities are not permitted on traffic control signal systems.

D. All poles shall comply with the Americans with Disabilities Act (“ADA”), City of Kent Design and Construction Standards, and state and federal regulations in order to provide clear passage within the rights-of-way. The location of any replacement or new Utility or Combination Pole
must not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect public health, safety or welfare.

E. In order to minimize negative visual impact to the surrounding area and to avoid excessive overhead clutter, the Director may deny a request for proposed small cell equipment where the proposed location is deemed inappropriate due to the extent of existing above ground wireless telecommunications or other electrical or cable facilities existing within a one hundred fifty foot (150’) radius of the proposed Small Cell equipment location. The Director may also deny a request for proposed small cell equipment on a Utility Pole already containing more than one electrical transformer.

F. The use of any city-owned infrastructure or Utility Pole for the siting of small cell equipment shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host for small cell equipment becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility, and the small cell facility and all associated equipment shall be removed.

G. Replacement Poles shall be located as near as possible to the existing pole, while meeting the current City of Kent Design and Construction standards. The abandoned pole must be removed.

H. Replacement and Combination Poles shall match the color and material of the original or adjacent poles. Replacement and Combination Poles shall be located in a location that minimizes the appearance from existing adjacent residential structures to the maximum extent feasible. For example, locations where new poles or replacement poles would be close to windows, in front of historically or architecturally significant buildings, or in locations where the equipment would disturb views of significance should be avoided.
I. The number of conduit shall be minimized to the number necessary to accommodate the facilities or equipment on the Utility Pole. The color of external cables, wires and conduit shall match the color of the Utility Pole or be a neutral color such as black, brown, beige, off-white, or light gray. The conduit shall be mounted as closely as possible to the pole, while still meeting the required safety clearances.

J. All cables and wiring on Utility Poles shall also be concealed to the maximum extent feasible. Any wires outside the conduit shall be consolidated and pulled as tight as technically feasible. Loops of excess wires shall not be lashed to the pole, to electrical wires supported by the pole, or to any pole-mounted equipment.

K. Ancillary equipment and facilities, including conduit and cable shall not dominate the structure or utility pole upon which these things are attached.

L. Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.

M. Side arm mounts and strand mounts for antennas or equipment are prohibited.

N. The city may consider the cumulative visual effects of small cell equipment mounted on poles within the rights-of-way when assessing proposed siting locations so as not to adversely affect the visual character of the area. This provision shall neither be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the service provider.

O. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in
a manner which dictates the use of a particular technology. When strict
application of these requirements would unreasonably impair the function
of the technology chosen by the applicant, alternative forms of concealment
or deployment may be permitted which provide similar or greater
protections from negative visual impacts to the streetscape.

P. No equipment on any Utility or Combination Pole may be operated so
as to produce noise in excess of ambient noise levels.

Sec. 6.16.050. Small Cell Equipment Design Standards and
Aesthetic Requirements on Utility Poles.

A. Locations.

1. Small cell equipment on Utility Poles shall be located in a
location that minimizes the appearance of small cell equipment from existing
adjacent residential structures to the maximum extent feasible. For
example, best efforts shall be used to avoid locations where small cell
equipment would be close to windows, in front of historically or
architecturally significant buildings, or in locations where the equipment
would disturb views of significance.

2. A Utility Pole shall not contain more than one small cell facility.

B. Replacement Utility Poles. The height of any Replacement Utility Pole
including antennas shall be: fifty (50) feet or less; or not extended to a
height of more than ten percent (10%) above its preexisting height as a
result, whichever is greater.

C. Small Cell Equipment Design. Small cell equipment shall comply with
the design standards set forth within this Section.

1. Color. Small cell equipment antennas, conduit, mounting
hardware and equipment cabinets shall be painted a neutral color to match
the color of the Utility Pole, or at the city’s preference, small cell equipment shall be painted any color of the city’s choosing, so long as the paint is reasonably commercially available.

2. **Mount.** Small cell equipment shall be mounted as closely to the Utility Pole as possible, and shall not extend out more than three (3) feet from the pole. Ground mounted equipment is prohibited.

3. **No Illumination.** Except as otherwise required by applicable law, small cell equipment shall not be illuminated.

4. **Concealed Wires.** Small cell equipment’s external cables and wires shall be enclosed in a conduit so that wires are protected and not visible or visually minimized to the maximum extent feasible. The number of conduit shall be minimized to the number necessary to accommodate the small cell facility and the conduit shall be mounted as closely to the pole, while still meeting the required safety clearances necessary for the pole to remain climbable. The color of external cables and wires and conduit shall match the color of the Utility Pole or be a neutral color such as black, brown, beige, off-white, or light gray. All cables shall be also be concealed to the extent feasible.

5. **Bulk.**
   
   a. Primary small cell equipment enclosures shall not exceed twelve (12) cubic feet in volume.
   
   b. Multiple antennas are permitted provided that the cumulative total antenna volume shall not exceed twelve (12) cubic feet.
   
   c. If, due to technological reasons, the proposed equipment enclosures do not comply with this subsection, the Director may approve primary small cell equipment enclosures up to twenty-eight (28)
cubic feet in volume following a submission to the Director demonstrating that the proposal includes the smallest small cell equipment enclosure that is technologically feasible for the specific small cell facility.

6. **Stickers.** The use of stickers on Utility Poles should be minimized to the extent feasible.

**Sec. 6.16.060. Small Cell Equipment Design Standards and Aesthetic Requirements on City-owned Infrastructure.**

A. **General Considerations.**

1. In order to install small cell equipment on city-owned infrastructure, the existing city-owned pole must be removed and replaced with a Combination Pole meeting the requirements of Section 6.16.040 General Requirements and this Section 6.16.060. Alternatively, the Director may approve the installation of a Combination Pole in a location where it has been identified that a streetlight is necessary and if the installation of the Combination Pole complies with the lighting criteria set forth in the City of Kent Design and Construction Standards.

2. Three types of Combination Poles are allowed: (1) Combination Pole with a canister or shrouded antenna; (2) Combination Pole with equipment shroud; and (3) Combination Pole with canister or shrouded antenna and equipment shroud, as depicted in Exhibit A.

B. **Requirements for all Combination Poles.**

1. The design of a Combination Pole shall match the existing city-owned infrastructure installed adjacent to the proposed Combination Pole and substantially conform to the depictions in Exhibit A or those subsequently adopted in the City of Kent Design and Construction Standards. The same Combination Pole shall be used in the same corridor,
in a defined area with adopted design standards or guidelines, or within a neighborhood to maintain a cohesive appearance.

2. The height of any Combination Pole replacing city-owned infrastructure including antennas shall be: fifty (50) feet or less; or not extended to a height of more than ten percent (10%) above its preexisting height as a result, whichever is less. The height of a Combination Pole installed at a new location pursuant to Section 6.16.060(A)(1) shall be approved by the Director.

3. The diameter of the Combination Pole shall be no larger than 16 inches. The Director may approve a diameter up to 20 inches if an applicant can demonstrate that more space is needed.

4. No horizontal flat spaces greater than 1.5 inches shall exist on the Combination Pole to prevent cups, trash and other objects from being placed on the pole.

5. All wiring and cabling shall be internal to the Combination Pole.

6. Any antenna or equipment shroud shall be colored to match the Combination Pole.

7. Any splicing of wiring and cabling shall be underground.

8. The luminaire shall be mounted at the same height as surrounding luminaires.

9. All mounting brackets, anchor bolts and other hardware connections shall be concealed.

C. Requirements for Specific Combination Pole Types.

1. Combination Pole with Canister or Shrouded Antenna.
a. The antenna shall be a canister or shrouded antenna and mounted at the top of the Combination Pole. There shall be a smooth transition between the upper part of the pole and the antenna and the antenna shall be integrated so that it appears as a continuation of the original pole. Antennas shall be scaled to be a maximum of 1.25 times the diameter of the pole at the antenna-mounting location.

b. The canister antenna or antenna shroud shall be colored to match the Combination Pole.

2. Combination Pole with Equipment Shroud.

a. In place of an antenna at the top of the Combination Pole, a single external shroud containing the antenna and other equipment mounted to the pole will be allowed.

b. The shroud shall be attached near the top of the pole in such a way that the wiring, cables, and equipment is hidden from view.

3. Combination Pole with Canister or Shrouded Antenna and Equipment Shroud.

a. This type of Combination Pole is allowed when various small cell technologies (e.g., LTE and 5G) provided by a single carrier are installed on the same pole. The applicant must demonstrate that the additional technology cannot be integrated into the equipment cabinet or the canister antenna.

b. The equipment shroud shall be attached near the top of the pole in such a way that the wiring, cables and equipment is hidden from view.

Sec. 6.16.070. Permits. Permits approved pursuant to this section shall be subject to the following findings by the Director: (1) that the
applicant has an executed franchise or limited license agreement with the city; and (2) the applicant has an executed master license agreement with the city if any component of the proposed small cell equipment or facility involves use of city-owned infrastructure.

**SECTION 2.** – **Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 3.** – **Corrections by City Clerk or Code Reviser.** Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

**SECTION 4.** – **Effective Date.** The City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare. This ordinance shall become effective immediately upon passage. The city clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

\[Signature\]  
DANA RALPH, MAYOR  
April 2, 2019  
Date Approved

\[Signature\]  
KIMBERLEY A. KOMOTO, CITY CLERK  
April 2, 2019  
Date Approved  
April 5, 2019  
Date Published

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