



## **Executive Summary**

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**Issue Title:** Wireless Communication Facilities Code Update – Work Study  
**Meeting Date:** April 16, 2019  
**Time Required:** 15 minutes  
**Attendees:** Dave Ward, Darren Gurnee, Jeff Smith

### **Action requested at this meeting:**

Review and approve the Findings of Fact for the Planning Commission recommended code update.

### **Background**

Wireless Communication Facilities (wireless facilities) are part of the infrastructure that serves wireless devices such as smartphones and tablets. New rules established by the Federal Communications Commission (FCC) affect the County's ability to review permit applications for wireless facilities. These new rules specifically affect:

- The County's deadlines to review and issue wireless facility permits. Exceeding the permit review times established by the FCC defaults to an approved permit status.
- Permits required to install wireless facilities on public land and small cell facilities on existing structures.

### **2018-2019 Wireless Communication Facility Code Update**

The Department of Community Development and the Prosecuting Attorney's Office propose an update to Kitsap County code regarding wireless facilities. The update will enable the County to stay consistent with new federal rules and to address changing wireless technology. The proposal will address:

- expansion of existing and construction of new wireless facilities.
- compatibility between wireless facilities and surrounding land uses.
- public health, safety, and welfare.
- aesthetic concerns in both urban and rural areas.

The planning commission held four study sessions, a properly noticed public hearing, and deliberation session. The meeting on April 16<sup>th</sup> will review the Findings of Fact (see Attachment 1) that include:

- the Planning Commission recommended code update (see Attachment 2).
- changes to the draft Findings of Fact suggested by the Planning Commission.

### **Attachments**

1. Attachment D – Planning Commission Findings of Fact
2. Attachment D – Planning Commission Findings of Fact – Appendix A – Planning Commission recommended code update

1 FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS OF THE PLANNING  
2 COMMISSION TO THE DEPARTMENT OF COMMUNITY DEVELOPMENT REGARDING  
3 AMENDMENTS TO KITSAP COUNTY CODE TITLE 17, AND KITSAP COUNTY CODE  
4 TITLE 21.

5 **Section 1.** General Findings.

6 The Kitsap County Planning Commission finds as follows:

- 7 1. The Washington State legislature, through RCW 36.32.120(7), has granted to county  
8 legislative authorities the power to make and enforce, by appropriate resolutions or  
9 ordinances, all police and sanitary regulations that are not in conflict with state law.
- 10 2. The Washington State legislature, through the Growth Management Act (GMA), Chapter  
11 36.70A Revised Code of Washington (RCW), requires certain counties and cities to plan  
12 for population growth in ways that, among other things, encourages development in  
13 urban areas; reduces sprawl in the rural areas; protects open space, recreation, and the  
14 environment; provides sustainable economic development and protects the health,  
15 safety, and high quality of life enjoyed by residents of this state. Kitsap County is subject  
16 to the requirements of GMA.
- 17 3. GMA, through RCW 36.70A.130, requires Kitsap County to comprehensively review, and  
18 revise if necessary, its Comprehensive Plan and development regulations at least every  
19 8-years. The most recent Kitsap County 8-year update concluded with the adoption of  
20 the 2016 Kitsap County Comprehensive Plan on June 27, 2016 by Ordinance 534-2016.
- 21 4. GMA, through RCW 36.70A.130, also requires Kitsap County to continually review and  
22 evaluate its Comprehensive Plan and development regulations.
- 23 5. The federal Telecommunications Act of 1996 (Act), 47 U.S.C. § 332 et seq., imposes  
24 substantive and procedural limitations on state and local government authority to  
25 regulate the location, construction, and modification of wireless facilities.
- 26 6. The Act, in 47 U.S.C. § 332(c)(7), requires state and local governments to act on siting  
27 applications for wireless facilities "within a reasonable period of time after the request  
28 is duly filed ... taking into account the nature and scope of such request." Failure to do  
29 so may constitute a failure to act subject to legal challenge.
- 30 7. In 2009, the Federal Communications Commission (FCC) issued Declaratory Ruling FCC  
31 09-99. This ruling provides guidance on what the FCC considers to be a presumptively  
32 reasonable time for processing wireless facility applications.
- 33 8. In 2012, Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation  
34 Act of 2012, also known as Section 6409(a) of the Spectrum Act, codified at 47 U.S.C. §

- 1 1455(a). This established additional substantive and procedural limitations on state and  
2 local government authority to regulate "eligible facilities requests" by requiring that a  
3 government "may not deny, and shall approve" a project application requesting  
4 modification of an existing tower or base station that does not substantially change the  
5 physical dimensions of such tower or base station.
- 6 9. On October 21, 2014, the FCC issued Report and Order FCC 14-153. This provided  
7 guidance on the implementation of Section 6409(a) of the Spectrum Act (47 U.S.C. §  
8 1455(a)) as well as additional guidance on Section 332(c)(7) of the Telecommunications  
9 Act of 1996 (47 U.S.C. § 332(c)(7)) and Declaratory Ruling FCC 09-99. Rules established  
10 by the Report and Order were codified at 47 CFR § 1.40001.
- 11 10. On September 26, 2018 the FCC issued Declaratory Ruling and Third Report and Order  
12 FCC 18-133 to impose additional requirements and restrictions on local government  
13 regulation of small wireless facilities. Rules and clarifications adopted in this Ruling are  
14 codified in Title 47 CFR §1.6001 et seq.
- 15 11. Starting in 2014, Kitsap County researched and sought input from subject matter  
16 experts to prepare initial draft language. Multiple County departments collaborated to  
17 review and revise this language into preliminary draft code. The County solicited and  
18 received preliminary feedback from a panel of wireless industry stakeholders.
- 19 12. The Department of Community Development (Department) used this initial language  
20 and feedback to propose amendments to Kitsap County code to increase consistency  
21 with federal standards noted above, as well as with Comprehensive Plan policies and  
22 Countywide Planning policies.
- 23 13. The formal amendment process began on October 24, 2018 with a briefing between the  
24 Board of County Commissioners and the Department of Community Development.
- 25 14. Kitsap County conducted public outreach through a dedicated and up-to-date web page  
26 and direct notification to various Kitsap County notification lists (GovDelivery &  
27 NextDoor).
- 28 15. On December 18, 2018, the Kitsap County Planning Commission held a regularly  
29 scheduled and properly noticed work study session to de-mystify and help people learn  
30 about wireless communication facilities.
- 31 16. On January 8, 2019, the Kitsap County Planning Commission held a regularly scheduled  
32 and properly noticed work study session to review the proposed code update and how it  
33 will impact Kitsap County.
- 34 17. On January 22, 2019, the Kitsap County Planning Commission held a regularly scheduled  
35 and properly noticed work study session to answer questions regarding the first two  
36 sessions.

- 1 18. On February 19, 2019, following effective and timely legal notice, the Kitsap County  
2 Planning Commission held a public hearing to accept testimony on the proposed  
3 amendment to Kitsap County code.
- 4 19. A public comment period on the proposed amendment to Kitsap County code was open  
5 January 8, 2019 through February 26, 2019. Twenty-five comments were received  
6 through emails, letters, online submittal forms, and verbal testimony.
- 7 20. The Kitsap County Planning Commission considered the proposed amendment to Kitsap  
8 County code on March 19, 2019 at a regularly scheduled and properly noticed meeting  
9 and recommended approval of the proposal, Staff Report Attachment C5, as amended  
10 through a unanimous commission vote.
- 11 21. The Revised Code of Washington (RCW) 36.70B.110(9) allows the county the choice of  
12 whether or not to provide administrative appeals for permits. In this Planning  
13 Commission recommended code, section 17.530.030 M. 'Appeals', no appeal is  
14 provided for letters of exemption or administrative conditional use permits (ACUP).  
15 While the Planning Commission generally favors the opportunity for administrative  
16 appeals, it reluctantly declines to do so here. The FCC rulings and limited case law may  
17 be read, albeit not clearly, to require that the time for an administrative appeal be  
18 calculated within the time for permit review (shot clock), and allowing an administrative  
19 appeal would substantially shorten the already limited review time and increase the  
20 potential for not meeting the shot clocks.
- 21 22. The Kitsap County Planning Commission recommends that the Department hold a  
22 stakeholder meeting to discuss the Planning Commission recommended code prior to  
23 the Board of County Commissioner review. Attendees should include stakeholders such  
24 as carriers, utility pole owners, owners of other public service structures, and other  
25 interested parties.
- 26 23. The Kitsap County Planning Commission requests that the Department report to the  
27 Planning Commission at the next applicable meeting:  
28 a. a summary of the meeting between the Department and Stakeholders described in  
29 finding number 22.  
30 b. any differences between the Planning Commission recommended draft code and  
31 the Department of Community Development recommended draft code presented  
32 to the Board of County Commissioners.
- 33 24. The proposed amendment to Kitsap County code is consistent with federal standards,  
34 the GMA, Kitsap Countywide Planning Polices, the Kitsap County Comprehensive Plan,  
35 and other applicable requirements.
- 36 25. The proposed amendment to Kitsap County code promotes the public interest and  
37 welfare of the citizens of Kitsap County, and should be approved.

1 **NOW THEREFORE, the Kitsap County Planning Commission recommends to the Department**  
2 **of Community Development as follows:**

3 **RECOMMENDATION: Adopt the proposed amendments to Kitsap County code attached**  
4 **hereto as Appendix A and incorporated herein by this reference:**

5 **APPROVED BY THE PLANNING COMMISSION OF KITSAP COUNTY, WASHINGTON, AT A**  
6 **REGULAR MEETING THEREOF, HELD THIS 16th DAY OF APRIL 2019.**

7

8 **BY** \_\_\_\_\_

9 **Kim Allen, CHAIR**



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

**APPENDIX A: PLANNING COMMISSION RECOMMENDED CODE UPDATE**

Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

**UPDATE TO KITSAP COUNTY CODE  
CHAPTER 17.530 'WIRELESS COMMUNICATION FACILITIES'  
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## KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

### APPENDIX A: PLANNING COMMISSION RECOMMENDED CODE UPDATE

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#### CHAPTER 17.530 WIRELESS COMMUNICATION FACILITIES.

(full repeal and replace of 17.530)

Sections:

- 17.530.010 Purpose and Applicability.
- 17.530.020 Nonconforming uses and structures.
- 17.530.030 Permitting.
- 17.530.040 General development standards.
- 17.530.050 Regulations for non-tower wireless communication facilities.
- 17.530.060 Regulations for tower-based wireless communication facilities.
- 17.530.070 Maintenance, repair, or modification.
- 17.530.080 Abandonment and Removal.

#### 17.530.010 Purpose and Applicability

- A. Purpose. This chapter includes regulations and development standards for wireless communication facilities (facilities) and related equipment. This chapter applies to facilities located inside and outside a county right-of-way (ROW). These regulations and development standards intend to:
  - 1. Allow for a variety of facility types in many locations.
  - 2. Reduce, preferably eliminate, the visual impact of facilities to surrounding properties.
  - 3. Encourage creative approaches to locating facilities in ways that are compatible with the surroundings.
  - 4. Encourage and facilitate collocation of antennas, support structures and related equipment on existing tower-based facilities or other structures that already support at least one non-tower facility.
  - 5. Provide a process with substantial public participation to locate and identify new site locations in a comprehensive manner.
  - 6. Require the use of stealth technology.
- B. Exemptions. Each of the following are exempt from the regulations of this chapter and shall not require a permit under this chapter:
  - 1. Maintenance or replacement of the existing related equipment with new related equipment that has identical dimensions and appearance, or smaller dimensions and a less intrusive appearance. While a letter of exemption is not required, the maintenance or replacement shall otherwise comply with all applicable regulations.
  - 2. Military and civilian radar, operating within the regulated frequency ranges, for the purpose of defense or aircraft safety.
  - 3. Amateur and citizen band transmitters and antennas, satellite dishes or similar communication facilities used for noncommercial purposes.
  - 4. Two-way communication transmitters used on a temporary basis by "911" emergency services, including fire, police, and emergency aid or ambulance service.
  - 5. Antennas located wholly within another structure, and not visible from the outside.
  - 6. Emergency communications equipment during a declared public emergency.
  - 7. A temporary, commercial wireless facility installed for providing coverage of a special event such as a fair, news coverage or sporting event. The wireless facility shall be



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- 1 exempt from the provisions of this chapter for up to two weeks before and after the
- 2 duration of the special event.
- 3 8. A temporary, commercial wireless facility installed for a period of 180 days, subject to
- 4 renewals at the County’s discretion, to provide service during repair, replacement, or
- 5 relocation of an existing facility or construction of a new facility.
- 6 9. Wireless communication facilities constructed to serve only first responders, such as
- 7 fire, police and emergency medical response services.
- 8 C. Prohibited locations and structures.
- 9 1. A facility shall not locate:
- 10 a. On single-family residences or on any residential accessory structure.
- 11 b. On real property or structures listed, or eligible for listing, on the:
- 12 i. National or Washington Registers of Historic Places.
- 13 ii. Official historic structures or historic districts lists maintained by the county.
- 14 A facility that conducts a Section 106 review through the National Historic
- 15 Preservation Act (NHPA) of 1966, 54 U.S.C. § 300101 et seq., shall not be prohibited.
- 16 c. Where the visual impacts analysis required by Section 17.530.040(B) concludes that
- 17 a more than moderate visual impact will occur and cannot be mitigated.
- 18 2. Tower based wireless communication facilities are prohibited:
- 19 a. When it meets the definition of a guyed-tower.
- 20 b. In areas where utility lines are predominantly located underground.
- 21 c. Within 200 feet of the shoreline, as defined in KCC Title 22 ‘Shoreline Management
- 22 Program’.
- 23 d. Within a critical area or its buffer, as defined in Title 19 ‘Critical Areas Ordinance’.
- 24 e. Within 300 feet of the boundary line of a municipal park unless the tower-based
- 25 facility is disguised through stealth technology as a tree, ~~or~~ natural feature, or
- 26 structure (i.e., silo, church steeple, or clock tower) that is compatible with its
- 27 surroundings and meets the requirements of 17.530.040 B ‘Visual Appearance’.
- 28 3. Related equipment is prohibited in a right-of-way within 150 feet of a park boundary
- 29 line, unless the applicant acquires written consent of the County Engineer and the
- 30 appropriate park director.
- 31 D. Other regulations.
- 32 1. This chapter regulates only the land use permit from the department. A wireless
- 33 communication facility may require other permits or review under other local codes or
- 34 under state or federal law. This includes:
- 35 a. Chapter 14.04 ‘Technical Building Codes’ regarding building permits.
- 36 b. Chapter 18.04 ‘State Environmental Policy Act’ regarding environmental review.
- 37 c. Title 11 ‘Roads, Highways, and Bridges’ regarding right-of-way permits.
- 38 2. Chapter 21.04 ‘Project Permit Application Procedures’ shall not apply unless specifically
- 39 stated in this chapter.

### 17.530.020 Nonconforming Uses and Structures

- 40 A. The non-conforming provisions of Chapter 17.570 ‘Nonconforming uses, structures and use
- 41 of structures’ apply except as provided in this section.
- 42



## KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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- 1 B. Non-conforming wireless communication facilities damaged or destroyed after [INSERT  
2 ADOPTION DATE] due to any reason or cause may be repaired and restored at the same  
3 location. The wireless communication facility (facility) shall otherwise comply with the  
4 terms and conditions of this chapter. A complete application, as provided in Section  
5 17.530.030 'Permitting,' to reconstruct the facility shall be filed with the department within  
6 one year from the date the structure was destroyed.
- 7 C. Non-tower and small wireless facilities shall be allowed to collocate upon any existing non-  
8 conforming base station or tower-based facilities.<sup>1</sup>

#### 9 17.530.030 Permitting

- 10 A. Permits required. An applicant shall obtain a land use permit from the department prior to  
11 the installation or construction of any wireless communication facility (facility). This  
12 chapter requires a(n):
- 13 1. Letter of exemption to:
- 14 a. Collocate a non-tower facility that does not substantially change an existing,  
15 approved facility.
- 16 b. Collocate a small wireless facility on any existing structure.
- 17 c. Replace a wireless support structure with an identical support structure.
- 18 2. Administrative conditional use permit (ACUP) to:
- 19 a. Collocate a non-tower facility that substantially changes an existing, approved  
20 facility.
- 21 b. Collocate a non-tower facility on an existing structure that has not previously been  
22 approved as a facility.
- 23 c. Construct a small wireless facility on a new structure.
- 24 d. Locate a tower-based facility within 500 feet of an existing tower-based facility.
- 25 e. Construct a tower-based facility disguised through stealth technology as a tree, ~~or~~  
26 natural feature, ~~or structure (i.e., silo, church steeple, or clock tower)~~ that is  
27 compatible with its surroundings and meets the requirements of 17.530.040 B  
28 'Visual Appearance'.
- 29 3. Conditional use permit (CUP) to construct a tower-based facility that does not qualify for  
30 an administrative conditional use permit (ACUP) in section 17.530.030 2.
- 31

<sup>1</sup> (The substance of this language is required by federal law and cannot be changed. See 47 CFR 1.40001 (which, effective 1/14/19 will become 47 CFR 1.6100) and FCC 14-153 at 86-87.)



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

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1

Table 1 Wireless Communication Facility (facility) Permit Review Summary				
Type of Facility	Number of Days for Decision 17.530.030 (H)	Land Use Permit		
		Letter of Exemption	ACUP	CUP
Replacement of wireless support structure with an identical support structure.	60	X		
<b>Collocation:</b>				
New or replacement non-tower facility that does not substantially change existing facility.	60	X		
New or replacement non-tower facility that substantially changes an existing facility	90		X	
A new non-tower facility on a structure not previously approved for facility use.	90		X	
Small wireless facility on any existing structure.	60	X		
<b>New facility and support structure:</b>				
Small wireless facility on a new structure.	90		X	
A tower-based facility within 500 feet of an existing tower-based facility.	150		X	
A tower-based facility disguised through stealth technology as a tree, <del>or</del> natural feature, <u>or structure (i.e., silo, church steeple, or clock tower)</u> that is compatible with its surroundings and meets the requirements of 17.530.040 B 'Visual Appearance'.	150		X	
Tower-based facility that does not qualify for the Administrative Conditional Use Permit (ACUP) process.	150			X

- 2 B. Pre-application Meeting. A pre-application meeting (see Section 21.04.120) is encouraged,
- 3 not required. The meeting may occur by telephone or in person as deemed necessary by
- 4 the department. The department shall indicate in writing when it agrees that a particular
- 5 document or specific information is not required for an adequate review of the application.
- 6 C. Applications for a letter of exemption.
- 7 1. All applications must include documentation that the proposed facility, in conjunction
- 8 with other facilities, shall not generate radio frequency emissions that exceed the
- 9 standards and regulations of the FCC.
- 10 1-2. Where a new or replaced non-tower facility is proposed that does not substantially
- 11 change an existing facility, the application for a letter of exemption shall contain all
- 12 information necessary to determine compliance with 47 USC 1455(a) and 47 CFR



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1. ~~400016100~~<sup>2</sup>, as now or hereafter amended. While no further information in the application is required, all facilities shall comply with Section 17.530.040 ‘General Development Standards’ except for subsections A, ~~and B,~~ and D.

~~2-3.~~ <sup>3-4.</sup> Where a small wireless facility on an existing structure is proposed, the application for a letter of exemption shall contain all necessary information to verify that the facility meets the definition of a small wireless facility and to determine compliance with this chapter.

~~3-4.~~ Where the replacement of a support structure with an identical support structure is proposed, the application for a letter of exemption shall contain engineer-stamped structural drawings that include:

- a. The existing support structure and the proposed support structure.
- b. Descriptions of each structure not shown on the drawings.
- c. A description of all existing and proposed facilities to be placed on the proposed support structure.

D. Applications for an administrative conditional use permit (ACUP). An ACUP application shall contain all information necessary to determine compliance with this chapter. Unless noted otherwise the application requires at least:

1. A site plan drawn to scale.
2. A landscape plan drawn to scale.
3. Except for small wireless facilities, a report describing the proposed facility with technical reasons for its design. The report shall ~~justify~~ describe the height, dimension, and location of the proposed facility.
4. Documentation that the proposed facility complies with all applicable state and federal laws and regulations, including radio frequency emissions and aviation safety.
5. Documentation that the proposed facility complies with this chapter.
6. A visual impact analysis as described in Section 17.530.040 B.1.
7. A seal and signature of a professional structural engineer, licensed in the State of Washington, on all construction documents for structures.
8. When the facility is located on property not owned by the applicant, a copy of the document that grants the applicant authority to use all areas proposed and needed to comply with this chapter, including but not limited to screening, setbacks, and access.
9. If the applicant is not a carrier, proof that an agreement exists between the applicant and a carrier committing the carrier to use the proposed facility in carrier’s service network. This submittal item cannot be waived. An application will not be approved without such commitment.
10. A State Environmental Policy Act (SEPA) checklist when required by WAC 197-11-800, as now or hereafter amended, and Chapter 18.04 of Kitsap County Code.

E. Applications for a conditional use permit (CUP). A CUP application shall contain all information necessary to determine compliance with this chapter. The application requires at least:

**Commented [DG1]:** Planning Commission change from 3/19/2019 meeting.

<sup>2</sup> As of 1/14/19, this reference will change to 47 CFR 1.6100



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- 1 1. All information required in Section 17.530.030 D 'Applications for an ACUP'.
- 2 2. Documented actual and reasonable efforts to collocate the facility. The documentation
- 3 shall demonstrate that the applicant contacted the owners of and sought permission to
- 4 install a facility on:
  - 5 a. All existing wireless support structures.
  - 6 b. Other tall structures or buildings within a one-mile radius of the proposed site.
- 7 3. Propagation studies. The application shall include at least one propagation study that
- 8 shows wireless coverage or capacity for a tower-based facility that exceeds sixty feet in
- 9 height.
  - 10 a. The propagation studies shall include, at a minimum, the following information:
    - 11 i. The current service and the service for at least two adjustment options at existing
    - 12 sites, if possible.
    - 13 ii. A description of the type and manufacturer of the proposed transmission/radio
    - 14 equipment.
    - 15 iii. The frequency range (megahertz band) assigned to the carrier.
    - 16 iv. The power, in watts, at which the carrier transmits.
    - 17 v. Any relevant related tests conducted by the applicant or carrier in determining the
    - 18 need for the proposed site and installation. All reasonable designated confidential
    - 19 proprietary information may be redacted.
  - 20 b. Only an adjustment will be allowed if a study demonstrates that the adjustment will
  - 21 eliminate a service gap.
  - 22 c. An adjustment may be required as a condition of approval if a study demonstrates
  - 23 that the adjustment will reduce the service gap.
- 24 4. Future collocation. The application shall include:
  - 25 a. Documentation that the applicant requested Kitsap 911 to determine the feasibility
  - 26 of collocating emergency service communications facilities. The proposed tower-
  - 27 based facility location and technical specifications shall be included with the request.
  - 28 b. A written commitment that the applicant will allow other antennas to collocate on
  - 29 the tower-based facility where technically feasible.
- 30 5. FCC-license. Each applicant that proposes a tower-based facility shall submit a copy of
- 31 its FCC license for the proposed location. The license shall include the name, address,
- 32 and emergency telephone number for the operator of the facility.
- 33 F. Fees. All applications for permits or requests for actions by the county shall be accompanied
- 34 by a filing fee in an amount established by county resolution. Fees for small wireless
- 35 facilities must be:
  - 36 1. a reasonable approximation of the County's costs.
  - 37 2. only objectively reasonable costs.
  - 38 ~~6-3.~~ no higher than the fees charged to similarly-situated competitors in similar
  - 39 situations.
- 40 G. Notice.
  - 41 1. Letters of exemption shall not require public notice.
  - 42 2. ACUPs and CUPs. Within 14 calendar days from the submission of a complete
  - 43 application, the department shall:



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

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- a. Mail notice to every property owner within **800-1,200** feet of the proposed facility. **New small wireless facility support structures located in the right of way are exempt from this requirement.**
  - b. Post notice on the property.
- The applicant is responsible for all costs associated with such notice. All notices shall contain the applicable information required by Section 21.04.210 'Notice of Application' or be a summary postcard with a link to such information.

**Commented [DG2]:** Planning Commission change from 3/19/2019 meeting.

H. Time for review.

1. Completeness.

- a. The county shall notify the applicant in writing of any information that is required to complete an application within ten calendar days of filing the application. The permit application automatically expires if the applicant fails to submit the requested information within 30 days of the department's written request.
- b. Prior to the expiration date, the applicant may request an extension to provide the required information. The department may grant up to one 30-day extension if it is determined that the required studies or information warrants additional time. Financial hardship shall not be considered for extensions of deadlines.
- c. Once the applicant has submitted the required information, the county shall notify the applicant within 10 days of the submittal if the application remains incomplete.
- d. The time tolled between the date of the County's written notifications to the date all requested information is received shall not count towards the number of days an application is in review for a decision.

**Commented [DG3]:** Planning Commission change from 3/19/2019 meeting.

2. Letters of Exemption. Once a **complete-initial** application has been filed, regardless of the deadlines for notice, the county has 60 calendar days, after accounting for the tolling provided above and restart time in review per section 17.530.030 H.5., to make its final decision on the application and to advise the applicant in writing of such decision.

3. ACUPs. Once an initial application has been filed, the county has 90 calendar days, after accounting for the tolling provided above and restart time in review per section 17.530.030 H.5., to make its final decision on the application and to advise the applicant in writing of such decision.

4. CUPs. Once an initial application has been filed, the county has 150 calendar days, after accounting for the tolling and restart time in review per section 17.530.030 H.5., to make its final decision on the application and to advise the applicant in writing of such decision.

5. Restart time in review.<sup>3</sup>

- a. Small wireless facilities. Submittal of information requested through sections 17.530.030 H.1.a. and 17.530.030 H.1.c. shall restart the time in review of an

<sup>3</sup> For small cells, however, the 60 days starts over if the county notifies the applicant within 10 days. Non-tower facilities do not restart. If the county notices the applicant on day 10, then receipt of the information requires decision in 50 days. Compare FCC 18-133 at 80 with FCC 14-153 at 11 and 129. The 90 and 150 days also do not restart (see FCC 09-99 at 12 and FCC 14-153 at 11). The proposed new 47 CFR 1.6003 (see FCC 18-133 at 80) includes the review times and tolling rules.



# KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

## APPENDIX A: PLANNING COMMISSION RECOMMENDED CODE UPDATE

Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

- 1 application once. Requests for information by the county after the first restart shall
- 2 not restart the time in review of an application again.
- 3 b. All other facilities. Submittal of information requested through 17.530.030 H.1.a.
- 4 and 17.530.030 H.1.c. shall not restart time in review of an application.
- 5 6. Batching. Applicants for small wireless facilities may batch requests into a single
- 6 application.<sup>4</sup>
- 7 I. Experts. The department may hire any consultant(s) and/or expert(s) necessary to assist the
- 8 department in reviewing and evaluating an application for a proposed facility. The
- 9 applicant and/or owner of the facility shall reimburse the county for all reasonable and
- 10 actual costs of the county’s consultant(s) in providing expert evaluation and consultation in
- 11 connection with these activities.
- 12 J. Approval. The department may approve, conditionally approve, or deny a permit for a
- 13 facility. Approval or conditional approval may only be granted when the requirements of
- 14 this chapter have been met. Approval may be revoked as provided in Kitsap County Code.
- 15 K. Permit Duration and extensions. Permits issued under this chapter expire within 12 months
- 16 from the date issued if construction is not complete at that time. Incomplete construction
- 17 by the permit expiration date requires submittal of a new permit application. The
- 18 department may grant one one-year extension when all of the following conditions are met:
- 19 1. The extension request is submitted in writing at least 30 calendar days prior to the
- 20 expiration of the permit.
- 21 2. Significant concerns with the extension can be mitigated by minor revisions to the
- 22 permit.
- 23 3. Tangible process has been made toward completion.
- 24 4. An extension would not adversely impact public health, safety or general welfare.
- 25 L. Director Interpretations. A director’s interpretation per Section 21.04.040 ‘Directors
- 26 Interpretations’ may resolve disputes regarding the interpretation of this chapter.
- 27 M. Appeals. A decision on a letter of exemption or an ACUP may not be appealed to the
- 28 Hearing Examiner in accordance with Section 21.04.290 ‘Appeals’.
- 29 N. Revoked Permit. The County may revoke a permit pursuant to 17.600.010 'Revocation for
- 30 noncompliance with conditions'. A facility with a revoked permit shall be considered
- 31 abandoned and subject to section 17.530.080 B.<sup>5</sup>

Commented [DG4]: Planning Commission change from 3/19/2019 meeting.

### 17.530.040 General Development Standards

- 32 A. Height. Wireless Communication Facilities (facilities) shall not exceed heights authorized in
- 33 this chapter. Height is measured as the total vertical distance from the ground level,
- 34

<sup>4</sup> The County can’t deny batching for small wireless facility applications. For details see FCC 18-133 at 80. A maximum number of applications can be established by Kitsap County. However, this may result in multiple batches applied for at the same time with the same time in review requirements as the single batched item.

<sup>5</sup> Section 17.600.010 'Revocation for noncompliance with conditions' requires a public hearing to revoke a “master plan, performance based development permit, administrative conditional use permit, hearing examiner conditional use permit, or variance granted in accordance with the terms of this title, may be revoked if any of the conditions or terms of such permit or variance are violated, or if any law or ordinance is violated in connection therewith.”



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Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

- 1 including any base pad, to the highest point of the facility, including any antennas,  
2 appurtenances, or related equipment.
- 3 B. Visual Appearance. All facilities shall employ the most current stealth technology to be the  
4 least visually and physically intrusive. All facilities shall also be aesthetically and  
5 architecturally compatible with the surrounding environment and shall be designed to  
6 blend with the existing surroundings.
  - 7 1. Visual impact analysis.
    - 8 a. Compatibility and visual impact shall be determined through a visual impact analysis.  
9 The analysis must use maps, photographs, photo-simulation, and other appropriate  
10 methods to show the existing topographical contours of the area and areas within a  
11 one-mile radius where any portion of the proposed facility can be seen. Line of sight  
12 includes from the ground to the rooftop of adjacent buildings.
    - 13 b. When more than a moderate visual impact is likely, the visual impact analysis shall  
14 include a visual demonstration, such as the erection of a crane, a balloon in a color  
15 similar to that of the proposed structure and of a size not less than four feet and not  
16 to exceed six feet, or similar device used to simulate the proposed dimensions and  
17 height of the structure. Ten working days prior to the demonstration, the applicant  
18 shall notify:
      - 19 i. The department.
      - 20 ii. All properties within 800 feet of the parcel where the demonstration will occur.  
21 The department shall provide the list of properties within 800 feet.
    - 22 2. More than moderate visual impact. A facility shall not be considered aesthetically  
23 compatible with the surrounding land uses if, within a one-mile radius, it results in more  
24 than a moderate visual impact. A “more than moderate” visual impact occurs when one  
25 or more of the following exist:
      - 26 a. The facility becomes a predominant feature in the viewscape.
      - 27 b. The facility disrupts a largely intact and unobstructed view of visually sensitive areas,  
28 which are those locations that provide views of one or more of the following: Puget  
29 Sound, lakes, large wetland complexes, major streams, valleys and ravines, large  
30 tracts of forested land, Mount Rainier, the Cascade mountain range or the Olympic  
31 mountain range. These views are particularly sensitive from certain places of the  
32 county, including residential areas, commercial areas, major transportation corridors  
33 and arterials in rural areas.
      - 34 c. The facility is not designed and painted to blend in with the surrounding  
35 environment.
      - 36 d. The facility is sited above visually predominant ridge lines.
      - 37 e. The facility extends ~~twenty~~ **forty** feet or more above the tree line.
      - 38 f. **Except for small wireless facilities**, a non-tower facility is proposed in a visually  
39 sensitive area and cannot be completely enclosed within the existing structure or  
40 camouflaged as another structure compatible with the surrounding environment.
    - 41 3. Other visual requirements. A facility must:



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- 1 a. Place all required stickers or other identifying labels on the underside of related
- 2 equipment, or away from public view on ground-mounted equipment, and not near
- 3 ground level if on a tower-based facility.
- 4 b. Place and size antennas and related equipment to blend into the architectural detail
- 5 of the supporting structure. Paint or another coating may be required to be visually
- 6 compatible with the support structure.
- 7 c. Screen electrical meter cabinets to blend with the surrounding area. Use of smart
- 8 meters are preferred.
- 9 d. For proposed fences, the fence must:
- 10 i. Be at least six feet in height and no more than eight feet in height.
- 11 ii. Be of a nonobtrusive material, such as a dark vinyl coated chain link that blends
- 12 with the surrounding area.
- 13 C. Lighting.
- 14 1. This chapter prohibits all artificially lighted facilities except:
- 15 a. Permanent 911 public safety facilities. This includes fire, police and emergency
- 16 medical response services.
- 17 b. Facilities located at a 700-foot elevation and more than one-half mile from a
- 18 residential area.
- 19 2. The applicant shall provide a detailed plan for lighting if an artificially lighted facility is
- 20 allowed. The plan shall demonstrate that the proposed lighting does not have a
- 21 negative impact on adjacent properties and complies with state and federal regulations
- 22 for lighting. The applicant shall promptly report any outage or malfunction of FAA-
- 23 mandated lighting to the appropriate governmental authorities and to the county.
- 24 3. Any facility needing lighting per FAA regulations shall be altered to avoid the need for
- 25 lighting unless Section 17.530.040 C.1. applies.
- 26 4. The department may allow security lighting for ground mounted related equipment.
- 27 Security lighting shall be directed away from adjoining properties through shielding and
- 28 arrangement. No more than one foot-candle of illumination may leave the property
- 29 boundaries.
- 30 D. Noise. Facility operation and maintenance shall comply with Chapter 10.28 'Noise'.
- 31 E. Related equipment for small wireless facilities.
- 32 1. Antennas and antenna elements shall be enclosed within the facility.
- 33 2. Antennas and antenna elements unable to be enclosed within the facility require the
- 34 applicant to demonstrate the inability to do so. In such cases, the antenna and antenna
- 35 elements shall be within a shroud mounted at the top of the facility. An opaque cover
- 36 (i.e., dyed film) may be used to cover the antenna face. The offset distance between an
- 37 antenna and pole must not exceed 12 inches. The shroud and opaque cover:
- 38 a. Shall cover all antenna and antenna elements in a single antenna shroud.
- 39 b. Shall match the support structure color, finish, and visually conceal all contents
- 40 and/or wiring to the greatest extent possible. A solid shroud is preferred.
- 41 c. Shall be cylindrical for pole facilities and match the pole shaft diameter, when
- 42 feasible. The shroud diameter shall not exceed 14-16 inches. Once transitioned from
- 43 the support structure shaft, the shroud diameter shall remain consistent.



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- 1 d. Shall not exceed a height of five feet. For light standards, this dimension is measured
- 2 from the top of the luminaire mast arm attachment point.
- 3 3. Antennas and antenna elements unable to be enclosed within the facility or shrouded at
- 4 the top of the facility require the applicant to demonstrate the inability to do so. In such
- 5 cases, a shrouded, externally mounted antenna package may be allowed if:
- 6 a. The shroud protrudes no more than two feet from the outer circumference of the
- 7 support structure.
- 8 b. The shroud height does not exceed five feet, mounted longitudinally to the structure
- 9 shaft.
- 10 c. The shroud and all parts of the antennae package are at least seven feet from the
- 11 ground.
- 12 4. A base shroud shall fully enclose all remaining equipment located on the structure. This
- 13 may include radios not mounted at top of structure, electric meters, and grounding
- 14 equipment, ~~and cut-off switches~~. The base shroud shall:
- 15 a. Be structurally sound to fully support the proposed structure and maximize
- 16 equipment volume.
- 17 b. Not exceed a height of six feet from mounting surface.
- 18 c. Match the support structure color, finish, and visually conceal and lock all contents
- 19 and/or wiring to the greatest extent possible. A solid shroud is preferred.
- 20 d. Where the facility is a pole, install a shroud that is cylindrical with a maximum
- 21 consistent diameter of 16 inches not including small architectural banding features.
- 22 This diameter may increase up to 20 inches if the location combines multiple carriers
- 23 or uses.
- 24 5. Enclosures separate from the support structure may be allowed if:
- 25 a. The applicant demonstrates the inability to enclose or shroud antenna and antenna
- 26 equipment as prescribed in Section 17.530.040(E)(4).
- 27 b. The enclosure is no greater than three feet six inches (3'-6") in any dimension.

#### F. Related equipment for non-small wireless facilities.

- 28 1. Antenna and antenna elements must match the support structure color, finish, and
- 29 visually conceal all contents and/or wiring to the greatest extent possible.
- 30 2. Remaining equipment must be placed underground, or enclosed and screened through
- 31 stealth technology or fencing and landscaping in a screening buffer. The buffer
- 32 requirement shall be contained in a recorded easement. Vegetation shall not be
- 33 removed without approval by the department of community development. Fencing shall
- 34 be a nonobtrusive material such as a dark coated chain link to blend in with the
- 35 surroundings.

36 F.G. Standard of Care. Facilities shall be designed, constructed, operated, maintained,

37 repaired, modified and removed in strict compliance with all current applicable technical,

38 safety and safety-related codes, and all federal, state and county laws and regulations.

39 These include without limitation the most recent editions of the following:

- 40 1. American National Standards Institute (ANSI) Code.
- 41 2. National Electrical Safety Code.
- 42 3. National Electrical Code.
- 43



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Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

- 1 4. All aviation safety standards.
- 2 5. All accepted and responsible workmanlike industry practices of the National Association
- 3 of Tower Erectors or the Telecommunication Industry Association.
- 4 ~~G.H.~~ Wind and ice. Facility structures shall be designed to withstand the effects of wind gusts
- 5 and ice. The design shall comply with the American National Standards Institute standard
- 6 design prepared by the engineering departments of the Electronics Industry Association,
- 7 and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- 8 ~~H.I.~~ Engineer signature. Construction documents for structures shall contain a seal and
- 9 signature of a professional structural engineer, licensed in the State of Washington.
- 10 ~~H.J.~~ Interference. Facilities shall comply with Federal Communication Commission regulations
- 11 regarding interference, not cause interference with:
- 12 ~~1. The county's radio frequency, wireless network, or Kitsap 911 (collectively "county~~
- 13 ~~operations");~~
- 14 ~~2. Other facilities or any FCC-licensed devices;~~
- 15 ~~3. Any similar third-party equipment.~~
- 16 ~~J.K.~~ Radio frequency emissions. The proposed facility, in conjunction with other facilities, shall
- 17 not generate radio frequency emissions that exceed the standards and regulations of the
- 18 FCC. These regulations include at least the FCC Office of Engineering Technology Bulletin 65
- 19 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio
- 20 Frequency Electromagnetic Fields," as amended.
- 21 ~~K.L.~~ Agreement for facilities on County property. The applicant and the County shall execute an
- 22 agreement to provide terms and conditions to locate a facility on County property. The
- 23 agreement must:
- 24 1. Be completed prior to construction of the facility.
- 25 2. Comply with the regulations in this chapter.
- 26 3. Be submitted with the application for the facility.
- 27 4. Address the following issues:
- 28 a. Facilities are subject to the county's right to fix an annual fee for use and occupancy
- 29 of the property.
- 30 b. A financial security must be submitted to protect the county from the costs and
- 31 expenses due to a failure to comply with the obligations in this chapter. The amount
- 32 and form of the financial security shall be decided by mutual agreement. The
- 33 amount of financial security shall be at least 150% of the cost of the facility unless
- 34 otherwise agreed.
- 35 c. Modifications requested by the county.
- 36 i. The county may determine that a change to a facility in the ROW is reasonably
- 37 necessary under the following circumstances:
- 38 (a) To facilitate or accommodate the construction, reconfiguration, completion,
- 39 repair, relocation, or maintenance of a public project within the ROW.
- 40 (b) To accommodate the vacation of ROW or the release of a utility easement.
- 41 (c) As required by applicable laws or to protect or preserve the public health,
- 42 safety, or welfare.



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- 1       ii. Within 60 days of written notice from the county, the owner or operator of a
- 2       facility in the ROW shall temporarily or permanently change, alter, relocate or
- 3       remove part or all of the facility. The department may approve up to two 90-day
- 4       extensions when all of the following conditions are met:
- 5       (a) The extension request is submitted in writing at least 30 calendar days prior
- 6       to the expiration of the 90 days.
- 7       (b) Any significant concerns with the extension can be mitigated.
- 8       (c) An extension would not adversely impact public health, safety or general
- 9       welfare.
- 10       (d) Financial hardship shall not be considered for extensions of deadlines.<sup>6</sup>
- 11       iii. Where an emergency exists, following notice from the county, the owner or
- 12       operator of the facility shall immediately effect a temporary or permanent
- 13       change, alteration, relocation or removal of part or all of the facility. An
- 14       emergency includes, but is not limited to, any interference with:
- 15       iv. The proper operation of a county-owned light pole, traffic control device, other
- 16       county facility.
- 17       v. ROW operations or pedestrian facilities.

### 17.530.050 Regulations for non-tower and small wireless communication facilities

- 19 A. Development regulations. Except as provided in Section 17.530.050(B) ‘Development
- 20 regulations in the public right-of-way (ROW)’ and in addition to Section 17.530.040 ‘General
- 21 Development Standards,’ the following applies to all non-tower wireless communication
- 22 facilities and small wireless facilities (facilities) for which an ACUP is required.
- 23     1. Collocation. All facilities shall collocate on existing wireless support structures unless
- 24     technologically infeasible, in which case the facility may locate on an existing pole or
- 25     structure.
- 26     2. Height. The total height of any facility after installation shall not exceed the maximum
- 27     height permitted in the underlying zoning district, except where the following are met:
- 28       a. The height will not exceed 20 feet above the roof surface.
- 29       b. No visual impacts to surrounding properties occurs. Visual impact is measured from
- 30       the ground or roof of an adjacent building.
- 31 B. Development regulations in the public right-of-way (ROW). The following regulations apply
- 32 to all non-tower and small wireless facilities located in the ROW and for which an ACUP is
- 33 required. If any conflict exists between these regulations and those elsewhere in this
- 34 chapter, the regulations herein shall control.
- 35     1. Location.

<sup>6</sup> The 90 day timeframe and two 90 day extensions are consistent with Section 17.530.080 B ‘removal’. Other examples in Kitsap County Code regarding extensions include:

- Section [14.04.268 'Permit Expiration'](#) which provides a 180 day extension to complete work for an issued building permit.
- Section [21.04.200 B.2.](#) which provides two 90 day extensions to submit information requested by the county for a permit.



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Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

- 1 a. All facilities and related equipment in the ROW shall not cause any physical or visual  
2 obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians  
3 and/or motorists, or inconvenience public use of the ROW.
- 4 b. All equipment more than four inches above the ground shall be placed outside of  
5 the clear zone or mitigated in accordance with the current edition of the County  
6 Road Standards. Ground-mounted related equipment, walls, or landscaping shall be  
7 located at least 18 inches from the face of the curb, sidewalk, or paved pathway.
- 8 2. Height. Related equipment located above ground, not mounted to the facility support  
9 structure, in the public ROW shall be:
  - 10 a. Compatible in scale and proportion to the structures upon which they are mounted.
  - 11 b. The smallest and least visibly intrusive as determined by the visual impact analysis.
  - 12 c. A height not to exceed four feet from finished grade.
- 13 3. Construction time, place and manner. The county shall determine the time, place and  
14 manner of construction, maintenance, repair and/or removal of all non-tower facilities  
15 in the public ROW based on public safety, traffic management, physical burden on the  
16 public ROW, and related considerations. All work shall be performed at the applicant's  
17 expense.
- 18 4. Tree Trimming. Tree trimming around facilities shall comply with industry standards.  
19 Tree trimming activities that impact traffic require a traffic control plan approved by the  
20 Department of Public Works. Trimming that involves a wireless support structure  
21 requires submittal of written permission from the owner of the structure to the County.  
22 The County shall not be liable for any damages, injuries, or claims arising from the  
23 applicant's actions under this subsection.

#### 17.530.060 Regulations for tower-based wireless communication facilities

- 24 A. Development regulations. Except as provided in Section 17.530.060(B) 'Development  
25 regulations in the public right-of-way (ROW)' and in addition to Section 17.530.040 'General  
26 Development Standards,' the following applies to all tower based wireless communication  
27 facilities (facilities) for which an ACUP or CUP is required.
  - 28 1. Modification or collocation.
    - 29 a. New tower-based facilities that exceed sixty feet in height and require a CUP are  
30 prohibited unless a propagation study shows coverage gaps cannot be filled through  
31 other means. Technical evidence shall demonstrate the inability to fill coverage gaps  
32 through related equipment, such as repeaters or antennas installed on existing  
33 structures to extend or infill service.
    - 34 b. A new tower-based facility that requires a CUP and is within one mile of an existing  
35 wireless support structure may not exceed 40 feet in height unless collocation has  
36 been actually and reasonably considered and, despite good-faith efforts, the non-  
37 tower facility cannot be accommodated on an existing structure or building for one  
38 of the following reasons, or cannot be sited on land owned and maintained by the  
39 county:
      - 40 i. The proposed antenna and related equipment exceeds the structural capacity of  
41 the existing building, structure or tower.
      - 42



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- 1           ii. The proposed antenna and related equipment causes radio frequency
- 2           interference with other existing equipment for that existing building, structure, or
- 3           tower and the interference cannot be prevented.
- 4           iii. The existing buildings, structures, or towers do not have adequate location, space,
- 5           access, or height to accommodate the proposed equipment or to allow it to
- 6           perform its intended function.
- 7           iv. An agreement could not be reached with the owner of such building, structure, or
- 8           tower after a good faith effort.
- 9        2. Location.
- 10       a. The location of a tower-based facility that exceeds sixty feet in height and requires a
- 11       CUP shall be necessary to provide coverage for the gap shown in the propagation
- 12       study for the service area.
- 13       b. The location shall be the least visually intrusive to the surrounding community or
- 14       shall be the only viable location to provide coverage for ~~the a~~ gap shown in a the
- 15       propagation study, when required through section 17.530.030 E.3.
- 16       3. Height.
- 17       a. ~~The propagation study will state a minimum functional height necessary for a tower-~~
- 18       ~~based facility to fill a gap in coverage.~~ A tower-based facility shall be constructed to:
- 19       i. the minimum functional height when applicable. A propagation study, when
- 20       required through section 17.530.030 E.3., will state a minimum functional height
- 21       necessary for a tower-based facility to fill a gap in coverage.
- 22       ii. not to exceed 40 feet taller than surrounding tree height.
- 23       ~~iii. and not to exceed 200 feet.~~
- 24       b. Tower-based facilities over 40 feet in height shall be equipped with an anti-climbing
- 25       feature.
- 26       4. Related equipment.
- 27       a. Ground-mounted related equipment associated, or connected, with a tower-based
- 28       facility must be placed underground, or enclosed and screened through stealth
- 29       technology or fencing and landscaping in a screening buffer. The buffer requirement
- 30       shall be contained in a recorded easement. Vegetation shall not be removed without
- 31       approval by the department of community development. Fencing shall be a
- 32       nonobtrusive material such as a dark coated chain link to blend in with the
- 33       surroundings shall be placed underground or screened from public view using stealth
- 34       technologies.
- 35       b. All related equipment, utility buildings and accessory structures shall be
- 36       architecturally and aesthetically designed to blend into the environment in which
- 37       they are situated and meet the minimum setback requirements of the underlying
- 38       zone.
- 39       5. Signs. Tower-based facilities shall post an easily visible emergency contact sign. The
- 40       sign shall include the name and phone number for a point of contact in case of an
- 41       emergency. No other sign is allowed except those required by the FCC or other federal
- 42       or state agencies.
- 43       6. Use of property and setbacks.



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- 1 a. Sole use. A tower-based facility may be allowed as the only use on a parcel if:
  - 2 i. The parcel is at least 6,000 square feet, and
  - 3 ii. The distance between the base of the tower-based facility and the nearest
  - 4 property line is at least 110% of the proposed height of the tower-based facility.
- 5 b. Combined use. A tower-based facility may be allowed with an existing use, or on a
- 6 vacant parcel in combination with another use, subject to the following minimum
- 7 conditions:
  - 8 i. The non-facility use on the property is any allowed use in the zone, except
  - 9 residential, and need not be affiliated with the facility.
  - 10 ii. The lot:
    - 11 (a) Complies with the dimensional requirements of the zone, and
    - 12 (b) Is sufficiently sized to accommodate the tower-based facility and any
    - 13 equipment buildings, security fences, buffers and setbacks.
  - 14 iii. The minimum distance between the base of a tower-based facility and the nearest
  - 15 property line is at least 110% of the proposed tower-based facility height or the
  - 16 minimum setback of the underlying zone, whichever is greater.
- 17 7. Screening, Landscaping, and Fencing.
  - 18 a. Tower-based facilities shall be screened with landscaping or other screening
  - 19 features. This requirement applies to all associated equipment shelters, cabinets,
  - 20 and other ground mounted related equipment.
  - 21 b. Existing trees, shrubs, and other vegetation shall be preserved to the maximum
  - 22 extent possible. Removal of existing vegetation requires prior approval from the
  - 23 department. Existing vegetation used to screen shall provide, through size and
  - 24 density, adequate, long-term screening. The existing vegetative buffer shall
  - 25 surround the entire facility and be at least five feet wide.
  - 26 c. Screening shall maximize coverage and cover at least 75% of the height of the tower-
  - 27 based facility. Recommended species for screening of tower-based facilities include
  - 28 Douglas fir, Big leaf maple, and Western redcedar. Planting height shall be at least
  - 29 six feet for an evergreen tree or two-inch caliper for a deciduous tree. Deciduous
  - 30 trees shall not exceed 25% of the trees used for screening. An analysis of the
  - 31 ultimate tree height potential, based on soil types, is required.
  - 32 d. Additional screening may be required to adequately screen adjacent residential
  - 33 properties based on site specific conditions.
  - 34 e. The department may allow a combination of existing vegetation, topography, walls,
  - 35 decorative fences or other features instead of landscaping. The combination of
  - 36 features must:
    - 37 i. Achieve the same degree of screening.
    - 38 ii. Be consistent with surrounding vegetation.
    - 39 iii. Not obstruct or interfere with the use of the ROW or county work.
  - 40 f. Screening requirements shall be recorded as a covenant running with the permit.
- 41 8. Access road. Tower-based facilities shall provide adequate emergency and service
- 42 access to the facility. An access road, turnaround space and parking shall be provided.
- 43 The access must:



## KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

### APPENDIX A: PLANNING COMMISSION RECOMMENDED CODE UPDATE

Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

- 1 a. Maximize to the extent practicable the use of existing public or private roads.
- 2 b. Match road grades to natural contours to minimize visual disturbance, soil erosion,
- 3 and stormwater impacts.
- 4 c. Where the access road is not owned by the applicant, a copy of an easement
- 5 authorizing the use of the access road shall be submitted to the County.
- 6 9. Parking. One tower-based facility requires at least one off-street parking space.
- 7 10. Future use. A proposed tower-based facility shall be designed structurally, electrically,
- 8 and in all respects to accommodate both the proposed antennas and comparable
- 9 antennas in the future.
- 10 B. Development regulations in the public right-of-way (ROW). The following additional
- 11 regulations apply to all tower-based facilities located in the ROW. If any conflict exists between
- 12 these regulations and those elsewhere in this chapter, the regulations herein shall control.
- 13 1. Location.
- 14 a. Tower-based facilities are prohibited from locating in the ROW in front of the façade
- 15 of any structure facing the ROW.
- 16 b. Tower facilities and related equipment in the ROW shall not cause any physical or
- 17 visual obstruction to pedestrian or vehicular traffic, create safety hazards to
- 18 pedestrians and/or motorists, or inconvenience public use of the ROW.
- 19 c. All equipment exceeding four inches above the ground shall be placed outside of the
- 20 clear zone or mitigated in accordance with the current edition of the County Road
- 21 Standards. Ground-mounted related equipment, walls, or landscaping shall be
- 22 located at least eighteen inches from of the face of the curb, sidewalk or paved
- 23 pathway.
- 24 d. Unless approved by the County engineer, ground-mounted related equipment is
- 25 prohibited in a ROW when:
- 26 i. The ROW width is 50 feet or less.
- 27 ii. Exclusively single-family residential lots front both sides of the street.
- 28 2. Height. Tower-based facility height in the ROW shall not exceed 40 feet.
- 29 3. Design requirements. Ground-mounted related equipment that cannot be placed
- 30 underground shall be screened, to the fullest extent possible, through the use of
- 31 landscaping or other decorative features.
- 32 4. Construction. Time, Place and Manner. The county shall determine the time, place and
- 33 manner of construction, maintenance, repair and/or removal of all tower-based
- 34 facilities in the ROW based on public safety, traffic management, physical burden on the
- 35 ROW, and related considerations. All work shall be performed at the applicant's
- 36 expense.
- 37 5. Tree trimming. Tree trimming around facilities shall comply with industry standards.
- 38 Tree trimming activities that impact traffic require a traffic control plan approved by the
- 39 Department of Public Works. Trimming that involves a wireless support structure
- 40 requires submittal of written permission from the owner of the structure to the County.
- 41 The County shall not be liable for any damages, injuries, or claims arising from the
- 42 applicant's actions under this subsection.

#### 43 **17.530.070 Maintenance and repair**



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- 1 To the extent permitted by law, the following maintenance and repair requirements shall apply:
- 2 A. All wireless communication facilities (facilities) shall be fully automated and unattended.
- 3 Visitation for maintenance or emergency repairs is allowed.
- 4 B. At all times facilities shall be kept and maintained in good condition, order and repair to
- 5 eliminate danger to life or property. Maintenance and repairs must:
- 6 1. Be completed by qualified maintenance and construction personnel.
- 7 2. Use the best available technology for preventing failures and accidents.
- 8 C. Graffiti. Graffiti on a facility shall be promptly removed at the sole expense of the owner or
- 9 operator. The owner or operator shall remove graffiti within fourteen calendar days of the
- 10 date of county notice.
- 11 D. Replacement of a support structure with an identical support structure requires a letter of
- 12 exemption per Section 17.530.030 C. All other support structure replacements require a
- 13 CUP per Section 17.530.030 E.

#### 14 **17.530.080 Abandonment and Removal**

- 15 A. Abandonment.
- 16 1. Notice of intent to abandon. The owner or operator of a facility shall provide written
- 17 notice to the department of the intent to abandon a facility.
- 18 2. Non-functioning facilities regulated by this chapter that remain unused for a period of
- 19 365 days shall be considered abandoned. This presumption may be rebutted by a
- 20 showing that such utility or device is an auxiliary, back-up, or emergency utility or device
- 21 not subject to regular use or that the facility is otherwise not abandoned.
- 22 3. Effective Date of Abandonment. Abandonment takes effect 30 days after notice is
- 23 received or after the end of the rebuttable presumption period.
- 24 B. Removal.
- 25 1. All abandoned facilities, or portions thereof, shall be removed within 90 days of
- 26 abandonment, unless a time extension is approved. The department may approve up to
- 27 two 90-day extensions when all of the following conditions are met:
- 28 a. The extension request is submitted in writing at least 30 calendar days prior to the
- 29 expiration of the 90 days.
- 30 b. Any significant concerns with the extension can be mitigated by minor revisions to
- 31 the permit.
- 32 c. Tangible process has been made toward abandonment.
- 33 d. An extension would not adversely impact public health, safety or general welfare.
- 34 2. Removal shall include restoring all affected property to substantially the same condition
- 35 as it was immediately before the installation of the facility, including restoration or
- 36 replacement of any damaged trees, shrubs or other vegetation, unless another
- 37 arrangement is made with the property owner.
- 38 3. Removal and site restoration shall be completed at the sole expense of the owner or
- 39 operator of the facility.

#### 40 **CHAPTER 17.110 DEFINITIONS.**

41 (removals in ~~strike through~~, additions are underlined)



# KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

## APPENDIX A: PLANNING COMMISSION RECOMMENDED CODE UPDATE

Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

1 ~~17.110.057~~ **Alternative technology.**

2 “Alternative technology” means the use of structures, fixtures, and technology which  
3 substantially limit the visibility of wireless communication support structures and facilities. This  
4 may include, but is not limited to, use of existing utility poles, flagpoles, existing structures such  
5 as water tanks, church steeples and any other method which substantially minimizes the visual  
6 impact of wireless communication support structures and facilities. This is commonly referred  
7 to as “stealth technology.”

8 **17.110.073 Antenna<sup>7</sup>**

9 “Antenna” means an apparatus designed for the purpose of emitting radiofrequency (RF)  
10 radiation, to be operated or operating from a fixed location pursuant to Commission  
11 authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds  
12 of all kinds, including the transmitting device and any on-site equipment, switches, wiring,  
13 cabling, power sources, shelters or cabinets associated with that antenna and added to a tower,  
14 structure, or building as part of the original installation of the antenna. For most services, an  
15 antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower,  
16 structure or building. However, in the case of AM broadcast stations, the entire tower or group  
17 of towers constitutes the antenna for that station. For purposes of this section, the term  
18 antenna does not include unintentional radiators, mobile stations, or devices authorized under  
19 ~~part 15 of this title~~ (CFR Title 15).

Commented [DG5]: Planning Commission change from 3/19/2019 meeting.

20 **17.110.103 Base station**

21 “Base station” means the equipment and non-tower supporting structure at a fixed location  
22 that enable FCC-licensed or authorized wireless communications between user equipment and  
23 a communications network.

24 **17.110.156 Carrier**

25 “Carrier” means a telecommunication company that offers telecommunication services (as  
26 defined in 47 USC §153(53)) to users of wireless devices through radio frequency signals.  
27 Synonymous terms are mobile service provider, wireless service provider, wireless carrier or  
28 mobile carrier.

29 **17.110.168 Collocation.**

30 “Collocation” means the use or addition of one or more wireless communications facilities on  
31 any existing structure, whether or not already used as a wireless communication facility, use of  
32 a single support structure by more than one wireless services provider where appropriate,  
33 and/or placement of up to four support structures for collocation on a specific site. This may  
34 include shared facilities with Kitsap County central communications or public safety emergency  
35 communications equipment.

36 ~~17.110.223~~ **Directional panel antenna.**

37 “Directional panel antenna” means, generally, a rectangular antenna designed to transmit and  
38 receive radio frequency signals in a specific directional pattern.

39 **17.110.227 Distributed Antenna Systems (DAS)**

<sup>7</sup> As defined in 47 CFR 1.1320 (d). Relates to small wireless facility.



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

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Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red.

1 “Distributed antenna systems” means network of spatially separated antenna sites connected  
 2 to a common source that provides wireless service within a geographic area or structure.

3 **17.110.228 ~~227~~ Drinking establishments.**

4 “Drinking establishments” means a business primarily engaged in the retail sale of alcoholic  
 5 beverages for consumption on the premises, including night clubs, bars, and taverns. It shall not  
 6 mean premises primarily engaged in the retail sale of food for consumption on the premises,  
 7 where the sale of alcoholic beverages is clearly accessory and incidental (e.g., comprises less  
 8 than twenty percent of the gross receipts). This definition excludes brew pubs.

9 **17.110.393 Lattice support structure.**

10 “Lattice support structure” means a ~~guyed~~ or self-supporting three or four-sided, open, metal  
 11 frame structure used to support telecommunication equipment.

12 ~~**17.110.463 Macro antenna array.**~~

13 ~~“Macro antenna array” means an attached wireless communication facility which consists of~~  
 14 ~~antennas equal to or less than fifteen feet in height or a parabolic antenna up to forty inches in~~  
 15 ~~diameter and with an area not more than one hundred square feet in the aggregate as viewed~~  
 16 ~~from any one point.~~

17 ~~**17.110.480 Micro antenna array.**~~

18 ~~“Micro antenna array” means an attached wireless communication facility which consists of~~  
 19 ~~antennas equal to or less than four feet in height (except omnidirectional antennas which may~~  
 20 ~~be up to six feet in height) and with an area of not more than five hundred eighty square inches~~  
 21 ~~in the aggregate.~~

22 ~~**17.110.483 Mini antenna array.**~~

23 ~~“Mini antenna array” means an attached wireless communication facility which consists of~~  
 24 ~~antennas equal to or less than ten feet in height or a parabolic antenna up to forty inches in~~  
 25 ~~diameter and with an area not more than fifty square feet in the aggregate as viewed from any~~  
 26 ~~one point.~~

27 **17.110.484 Minimum functional height**

28 “Minimum Functional Height” means the shortest height at which a proposed wireless  
 29 communications facility can perform its intended function, **including communications and**  
 30 **collocation.** Minimum functional height is measured vertically from the ground level to the  
 31 highest point on the structure, including antennas and subsequent alterations.

**Commented [DG6]:** Planning Commission change from 3/19/2019 meeting.

32 **17.110.494 Modification**

33 “Modification” means any change made to an existing wireless communications facility  
 34 (facility). A modification constitutes a substantial change if (1) the change to the facility meets  
 35 the definition of substantial change herein provided; (2) the change would defeat the existing  
 36 concealment elements of the facility; or (3) the change does not comply with pre-existing  
 37 conditions associated with the prior approval of construction or modification of the facility.

38 **17.110.503 Monopole.**

39 “Monopole” means a wireless communications facility that consists of a single pole structure,  
 40 designed and erected on the ground or on top of a structure, to support communications



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~~antennas and connecting appurtenances. structure composed of a single spire used to support telecommunication equipment.~~

**~~17.110.547 Parabolic antenna.~~**

~~“Parabolic antenna” means an antenna which is a bowl-shaped device for the reception and/or transmission of radio frequency communication signals in a specific directional pattern. (Also known as a “dish antenna.”)~~

**17.110.656 Related equipment**

“Related equipment” means any piece of equipment related to, incidental to, or necessary for the operation of a non-tower wireless communication facility (facility) or tower-based facility. By way of illustration, not limitation, related equipment includes generators.

**17.110.687 Stealth technology.**

“Stealth technology” means the camouflaging methods applied to wireless communication facilities (facilities) to render them more visually appealing and to blend the proposed facility into the existing structure or visual backdrop in such a manner to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure and facilities constructed to resemble trees, shrubs, light poles, flag poles, chimneys, church crosses, clock towers, gas station signs, statues, or rocks as appropriate to the surrounding environment. See Section 17.110.057, Alternative technology.

**~~17.110.707 Support structure.~~**

~~“Support structure” means a structure designed and constructed specifically to support a wireless communication antenna array, and may include a monopole, self-supporting (lattice) tower, guy-wire support tower and other similar structures. Any device which is used to attach an attached wireless communication facility to an existing building or structure shall be excluded from the definition of and regulations applicable to support structure.~~

**17.110.708 Substantially change or substantial change<sup>8</sup>**

“Substantially change” or “substantial change” means a modification to an existing wireless communications facility (facility) that changes the physical dimensions of the tower or base station in any of the following ways:

A. Height.

1. For tower-based facilities outside the public right-of-way (ROW), the modification increases the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed 20 feet, whichever is greater.
2. For tower-based facilities within the ROW and any base station, the modification increases the height of the facility by more than 10% or 10 feet, whichever is greater.
3. Changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on rooftops. In all other

<sup>8</sup> The substance of this language is required by federal law and cannot be changed. See 47 CFR 1.40001 and FCC 14.153 at 76.



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### APPENDIX A: PLANNING COMMISSION RECOMMENDED CODE UPDATE

Changes from Attachment C1 – Draft Code for Planning Commission Review shown in red. circumstances, changes in height shall be measured from the original height of the facility plus any modification approved prior to the passage of the federal Spectrum Act (February 22, 2012).

#### B. Width.

1. For tower-based facilities outside the ROW, the modification adds an appurtenance to the body of the tower that protrudes from the edge of the tower by more than 20 feet, or more than the width of the tower structure at the level off the appurtenance, whichever is greater.
2. For tower-based facilities within the ROW and any base station, the appurtenance protrudes from the edge of the structure by more than 6 feet.

#### C. Equipment cabinets.

1. For any facility or base station outside the ROW, the modification involves installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed 4 cabinets.
2. For any facility or base station within the ROW, the modification involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or involves the installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.

#### D. Excavation.

1. For any facility or base station, the modification entails any excavation or deployment outside the current site. As used herein, for tower-based facilities outside the ROW, site shall mean the boundaries of the leased area including utility easements; for all other facilities, site shall mean that area adjacent to the structure and within which related equipment already exists.

#### E. Stealth technology.

1. For any facility or base station, the modification would defeat any concealment element.

#### F. Prior conditions of approval.

1. Except as set forth above, the modification does not comply with conditions of approval for the initial construction or any prior modification.

#### **17.110.721 Tower**

“Tower” means any structure built for the sole or primary purpose of supporting one or more antennas and related equipment, including but not limited to, self-supporting lattice towers, guy towers and monopoles. This does not include small wireless facilities as defined in Section 17.110.070 A.

#### **17.110.724 Tower-guy-wired**

Tower-guy-wired” means a tower supported by a tensioned cable designed to add stability to a free-standing structure.

#### **17.110.764 Wireless**



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1 “Wireless” means transmissions through the airwaves including, but not limited to, infrared line  
2 of sight, cellular, broadband personal communication service, microwave, satellite, or radio  
3 signals.

4 ~~17.110.765~~ **Wireless communication antenna array.**

5 ~~“Wireless communication antenna array” means one or more rods, panels, discs or similar~~  
6 ~~devices used for the transmission or reception of radio frequency (RF) signals through~~  
7 ~~electromagnetic energy that can be attached to a building or sign. Wireless communication~~  
8 ~~antenna array examples may include an omni-directional antenna (whip), a directional antenna~~  
9 ~~(panel) and/or a parabolic antenna (dish).~~

10 **17.110.770 Wireless communication facility.**

11 ~~“Wireless communication facility” means the antennas, nodes, control boxes, towers, poles,~~  
12 ~~conduits, ducts, pedestals, electronics and other related equipment used for the purpose of~~  
13 ~~transmitting, receiving, distributing, providing, or accommodating wireless communications~~  
14 ~~services. any unstaffed facility used for the transmission and/or reception of radio frequency~~  
15 ~~(RF) signals through electromagnetic energy. This usually consists of an equipment shelter or~~  
16 ~~cabinet, a support tower or structure used to achieve the necessary elevation, and the antenna~~  
17 ~~array.~~

18 A. A “Small wireless facility”<sup>9</sup> means a facility that meets each of the following conditions:

19 1. The facility:

- 20 a. Is mounted on a structure 50 feet or less in height, with the height including any  
21 antennas; or  
22 b. Is mounted on a structure no more than 10 percent taller than other adjacent  
23 structures; or  
24 c. Does not extend an existing structure on which is to be located to a height of more  
25 than 50 feet or by more than 10 percent, whichever is greater.  
26 2. Each antenna associated with the facility, excluding associated antenna equipment is no  
27 more than three cubic feet in volume; and  
28 3. All other wireless equipment associated with the structure, including the wireless  
29 equipment associated with the antenna and any pre-existing associated equipment on  
30 the structure, is no more than 28 cubic feet in volume; and  
31 4. The facility is not required to be registered with the FCC under 47 CFR Part 17; and  
32 5. The facility does not result in human exposure to radiofrequency radiation in excess of  
33 the applicable FCC safety standards in 47 CFR 1.1307(b).

34 B. A “non-tower wireless facility” means a facility that is not a small wireless facility and does  
35 not involve, as part of the initial installation or construction, a wireless support structure.  
36 The term includes antennas, data collections units, and related equipment, but shall not  
37 include any wireless support structure. Except as allowed for small wireless facilities, the  
38 need to construct a wireless support structure will transform the non-tower facility into a  
39 tower-based facility.

<sup>9</sup> The substance of this language is required by federal law and cannot be changed. Required by FCC 18-133.



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- 1 C. A “tower-based wireless facility” means a facility installed or constructed with a Tower as
- 2 defined in 17.110.721. Unless a DAS hub facility meets the definition of a small wireless
- 3 facility, the DAS hub shall be considered a tower-based facility.
- 4 **17.110.775 Wireless communication support structure.**
- 5 “Wireless communication support structure” means a freestanding structure, such as a tower-
- 6 based wireless communication facility, or any other support structure that could (or does)
- 7 support the placement or installation of a facility. ~~structure specifically designed to support a~~
- 8 ~~wireless communication antenna array. This may include a monopole structure, lattice~~
- 9 ~~structure or building.~~
- 10 ~~**17.110.780 Whip antenna.**~~
- 11 ~~“Whip antenna” means an antenna that is cylindrical in shape up to twenty feet in height~~



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

1 **CHAPTER 12.04 PROJECT PERMIT APPLICATION PROCEDURES.**  
2 **(removals in ~~strike~~through, additions are underlined)**

3 **21.04.020 Applicability.**

- 4 A. Unless otherwise provided, the regulations identified in this chapter shall apply to the  
5 following Kitsap County Code (KCC) provisions:  
6 1. Sections 11.36.060(1) through (4), roads; and Section 11.22.070(a), roads;  
7 2. Title 12, Stormwater Drainage, Chapters 12.04 through 12.20 and 12.28 through Section  
8 12.32.090;  
9 3. Title 16, Land Division and Development;  
10 4. Title 17, Zoning, except Chapter 17.530 'Wireless Communication Facilities';  
11 5. Title 18, Environment;  
12 6. Title 19, Critical Areas Ordinance; and  
13 7. Title 22, Shoreline Master Program.  
14  
15  
16

DRAFT