**CITY OF KIRKLAND**
**Planning and Community Development Department**
**123 Fifth Avenue, Kirkland, WA 98033 425.587-3225**
**www.ci.kirkland.wa.us**

# MEMORANDUM

**To:** Dave Ramsay, City Manager

**From:** Eric R. Shields, AICP, Director
Michael Bergstrom, AICP, Consultant

**Date:** February 21, 2006

**Subject:** RECOMMENDATION ON AMENDMENTS TO CHAPTER 117 KZC – PERSONAL WIRELESS SERVICE FACILITIES, FILE NO. IV-03-13

RECOMMENDATION:

1. Approve the proposed amendments. The Council may do so by adopting the enclosed ordinance.

2. Approve amendments to KMC 5.74.070 (Fees charged by planning department) for certain Personal Wireless Service Facility proposals. The Council may do so by adopting the enclosed ordinance.

POLICY IMPLICATIONS:

The proposed amendments to Chapter 117 KZC will update and clarify the City's regulations pertaining to the siting of Personal Wireless Service Facilities (PWSF). They will continue and strengthen City policies that favor co-location of wireless facilities, placing new antennas on existing structures rather than erect new support structures, and locating facilities, particularly new towers, outside of residential areas. The proposed amendments to KMC 5.74.070 will establish review fees for procedures addressed in Chapter 117.

BACKGROUND DISCUSSION:

Chapter 117 was adopted in 1998, and has not been amended since that time. Over the years it has become apparent to both City Staff and the wireless industry that the ordinance could be improved in substance, organization, and clarity. The enclosed ordinance makes those improvements, and is the result of numerous staff meetings, input from industry representatives, examination of regulations from other communities, and public hearings.

Although the proposal was reviewed through Process IV pursuant to Chapter 160 KZC, in 2005 the City Council determined that the Planning Director should conduct the required public hearing rather than the Planning Commission due to the heavy workload of the Commission. On

August 29, 2005 and January 10, 2006 I held joint public hearings with the Houghton Community Council.

On January 23, 2006 the Community Council deliberated and voted to recommend approval of the amendments. However, they stated one concern for the record, having to do with KZC 117.25.4. That section exempts satellite dish antennas one meter (roughly 39") or less in diameter and located in residential zones from the Chapter provisions. Following the January 23 meeting Staff verified that the FCC prohibits restrictions on dish antennas that are one meter or less in diameter. Therefore, the exemption must remain. Staff contacted one satellite dish purveyor, who explained that most residential dishes are much smaller than one meter, typically ranging from 18" to 24" in any given dimension (some are oval in shape).

I agree with the Community Council that the enclosed ordinance should be approved, and formally recommend its adoption by the City Council. Ordinance adoption will create the need for some changes to KMC 5.74.070 (Fees charged by planning department), so a companion ordinance is also enclosed to ensure those changes occur.

PROPOSED CHANGES:

Changes are proposed throughout Chapter 117. The more significant changes are summarized below. A section-by-section list of the proposed changes is included in Appendix A.

Many of the changes are intended to make the chapter more readable and understandable, to clarify confusing provisions, and to help the chapter function in a more comprehensive manner. Those changes include:

**Chapter reorganization**, to present the information in a more logical manner.

**Definitions** (117.15) are revised where necessary to provide clarity. New definitions have been added for "building", "other support structure", "replacement structure", and "utility pole".

**New sections** are added to make the chapter more "complete", including 117.05 (User Guide), .25 (Exemptions), .30 (Prohibited Devices), .45 (Pre-Submittal Meeting), .55 (Determination of Application Completeness), .90 (Removal From City Property – When Required), .100 (Lapse of Approval), .105 (Complete Compliance Required), .110 (Time Limit), and .115 (Compliance With Other City Codes).

**The review process table** in 117.40 is revised for clarification, and to more accurately reflect locational priorities for PWSF.

**Application submittal requirements** are removed from 117.50. The section now refers to forms provided by the Planning Department.

**Standards** for towers and antennas (117.65) and standards for equipment structures (117.70) are placed in separate sections, to remove confusion over what standards apply to what PWSF elements.

The following are among the more specific changes proposed:

**117.40 – Application Review Process.** Several important changes are made to the table in this section, including:

- Development standards are removed, so that the table could more clearly communicate the required review process for different facility types.
- Specificity added to facility types, for clarification.
- For replacement utility poles, review process it tied to the proposed size increase of pole (diameter).
- For new towers, the review process is tied to proposed tower height and underlying zone.
- Introduces Process IIA review for certain facility types (existing Chapter 117 does not use Process IIA).
- Through Process I, allows attachment of antennas to non-residential buildings (churches, schools) in residential zones (existing Chapter 117 does not address this).
- Through Process IIA, allows new towers exceeding 40' in height in non-residential zones (existing Chapter 117 requires Process IIB).
- Through Process IIA, allows attachment of antennas to multi-family residential buildings (existing Chapter 117 does not address this).

**117.65 – PWSF Standards.** Specific substantive changes pertaining to towers and antennas include:

- .65.3.d prioritizes the routing of cable and conduit inside any new tower, utility pole, or other support structure, rather than attaching it to the outside of such structure.
- .65.4.a changes the required setback for towers <u>from</u> 100% of tower height <u>to</u> 20' plus one-half foot for each foot of height above 40'.
- .65.6 establishes new clearance allowances for PWSF attached to utility poles. Depending on zone and purpose of utility pole, it allows new antennas to be placed either 15' or 21' above the top of a pole or electrical conductor. The existing Chapter 117 allows 10'.

**117.70 – Equipment Stucture Standards** includes the following substantive changes:

- .70.1 and .2 exempt equipment structures that are fully contained in a legally established building from size limitations.
- .70.3 limits the height of ground-mounted equipment structures located in a right-of-way to 30 inches.
- .70.4 requires a 10' setback for equipment structures located on private property and over 30 inches in height.

**117.75 – Screening** includes the following substantive changes:

- .75.4.a exempts PWSF located in a right-of-way from buffering requirements, if that PWSF requires only a Planning Official Decision.
- .75.4.b allows optional measures for buffering, to provide flexibility and response to site context.

**117.80 – Departures From Chapter Provisions** clarifies that the 40' height limit for towers in residential zones and the allowable height for antennas above utility poles may not be modified.

DECISIONAL CRITERIA:

KZC 135.25 establishes that the City may amend the text of the Zoning Code if:

1. The proposed amendment is consistent with the applicable provisions of the Comprehensive Plan; and
2. The proposed amendment bears a substantial relation to public health, safety, or welfare; and
3. The proposed amendment is in the best interest of the residents of Kirkland.

The proposed amendment satisfies the above criteria. It is consistent with Comprehensive Plan Utility Goal U-5: *Ensure adequate and competitively priced telecommunication infrastructure, facilities and services*, Policy U-5.3: *Review and update City policies, procedures and regulations to facilitate the installation and maintenance of telecommunication systems*, and Policy U-5.5: *Involve community stakeholders and service providers in telecommunication decisions*. The amendment relates to the public health, safety, and welfare and is in the best interest of Kirkland residents because it will bring our wireless regulations into greater alignment with established City policy, will strengthen and clarify those regulations for better results and predictability, and will provide opportunities for public involvement in decision-making that is commensurate with the type of facility proposed, while ensuring adequate telecommunication infrastructure throughout the city.

CONCLUSION:

After review of the enclosed materials and consideration of the public testimony received at the public hearings, I conclude that the proposed amendments satisfy the applicable decision criteria, and therefore recommend that they be approved by the City Council. In addition, I recommend that the City Council adopt the fee schedule changes reflected in the enclosed companion ordinance.

APPENDICES:

A. Summary of Changes

ENCLOSURES:

1. Minutes of January 23, 2006 Houghton Community Council Meeting
2. January 23, 2006 Errata Sheet
3. E-mail thread, January 22, 2006, between Michael Bergstrom and Gary Abrahams (submitted at January 23, 2006 public hearing)
4. January 17, 2006 Staff Memo to the Planning Director and Houghton Community Council
5. Minutes of January 10, 2006 Planning Director and Houghton Community Council Public Hearing

6. December 27, 2005 Staff Memo to the Planning Director and Houghton Community Council
7. Minutes of August 29, 2005 Planning Director and Houghton Community Council Public Hearing
8. Exhibits 1-4, submitted at August 29, 2005 public hearing.
9. August 19, 2005 Staff Memo to the Planning Director and Houghton Community Council
10. Proposed Ordinance – Chapter 117 Amendments
11. Proposed Ordinance – Fee Ordinance (KMC 5.74.070)

**APPENDIX A – SUMMARY OF CHANGES**
Memo to Dave Ramsay from Eric Shields and Michael Bergstrom
February 21, 2006
File No. IV-03-13

The following is a section-by-section summary of proposed changes to Chapter 117 KZC. Minor wording changes are not included in this summary:

Table of Contents
Revised to reflect new sections that have been added and Chapter reorganization.

117.05 – User Guide
New section, similar to sections appearing in other KZC chapters.

117.10 – Policy Statement
.1.h Adds goal to prioritize PWSF on existing structures, particularly on public property.

117.15 – Definitions
Intro: Refers to Ch 5 KZC for terms not defined in Ch 117 KZC.
.2 Revises "antenna height" to clarify method of measurement.
.3 New definition of "building".
.7 Revises "existing structure" for clarity and accuracy.
.10 Revises "nonresidential" or "nonresidential zone" to clarify that zones extend to the centerline of the right-of-way.
.11 New definition of "other support structure".
.13 New definition of "replacement structure".
.14 Revises "residential" to clarify that zones extend to the centerline of the right-of-way.
.15 Revises "tower" to clarify that it does not include replacement utility poles.
.16 New definition of "utility pole".

117.20 – Applicability *(was "New and Existing Facilities")*
.2 Clarifies how various changes to existing antennas and towers will be processed.
.3 Clarifies how various changes to equipment structures will be processed.
.4 Adds satellite radio and GPS to list of items covered by this Chapter.

117.25 – Co-Location
Existing section deleted, unnecessary.

117.25 – Exemptions
New section, identifying exemptions to the provisions of this Chapter.

117.30 – Prohibited Devices
New section, prohibiting most transportable PWSF ("cell on wheels") devices.

117.35 – Permit Required
Clarifies that permit requirements extend to all private and public land and rights-of-way.

117.40 – Application Review Process *(was "Priority of Locations")*
Intro: States that pre-submittal meeting is required; refers reader to other sections for substantive requirements.
Table: (1) Removes various development standards; focuses on review process.
(2) Improves relationship of review process with City policies guiding type and placement of facilities (i.e., easier review process for more desirable facilities, more stringent process for less desirable facilities).
(3) Changes "Administrative" decisions to "Planning Official" decisions.

(4) Establishes Process IIA for certain facilities.
(5) Allows antenna attachment to non-residential buildings in residential zones (e.g., schools, churches) through Process I.
(6) Allows antenna attachment to multi-family residential buildings through Process IIA.
(7) Provides brief description of each review process.
(8) Provides clarifying footnotes.

117.45 – Pre-Submittal Meeting
New section requiring pre-submittal meeting before an application can be processed, similar to requirement in other Chapters.

117.50 – Application Requirements
Removes itemized list of permit application requirements. Defers to forms provided by the Planning Department.

117.55 – Determination of Application Completeness
New section requiring that an application must be determined to be complete prior to processing, similar to requirements in other Chapters.

117.60 – Third Party Review
Requires applicant for a Process IIB permit for a new tower to evaluate alternate solutions within ¼ mile radius of proposal site (this requirement was moved from 117.40 – Application Review Process (formerly 117.20 – Priority of Locations).

117.65 – Other Wireless Communications Facilities
Section deleted, unnecessary.

117.65 – PWSF Standards *(was "Design Standards")*

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|---|---|
| Gen'l: | Section reorganized to separate standards applicable to equipment structures from standards applicable to other PWSF, for purposes of clarity ("Equipment Structure Standards" now contained in 117.70). |
| .1, .2 | Emphasizes that PWSF location and design should reflect the context of its setting, including the streetscape. |
| .3 | Presents typical means of "concealment technology", allowing the City to require or approve alternative means to more appropriately reflect site context. |
| .3.d | Prioritizes the routing of cable or conduit through the inside of the support structure, while providing for the option to place it on the outside of the structure. |
| .3.e | Allows City to consider alternative concealment measures proposed by the applicant. |
| .3.f | Clarifies that the manner of concealment for PWSF reviewed through Process IIA or IIB will be determined as part of that process. |
| .4 | Clarifies setback requirements for towers and replacement structures on private properties. |
| .5 | Clarifies how antenna height is measured, and provides examples of information to demonstrate that towers and antennas are the "minimum height necessary". |
| .6 | Establishes maximum antenna height on utility poles. |
| .7 | Clarifies height allowance for antennas on a building, mechanical equipment enclosure, or water reservoir. |
| .13 | Establishes that PWSF must comply with noise standards of KZC 115.95. |

117.70 – Equipment Structure Standards *(formerly combined with PWSF standards in "Design Standards")*

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|---|---|
| Gen'l: | Aggregates standards for equipment structures in one section. |
| .1 | Revises and clarifies size allowances in residential zones; exempts equipment structures located in buildings from size restrictions. |
| .2 | Exempts equipment structures located in buildings in non-residential zones from size restrictions. |

.3 Establishes new 30-inch height limitation for ground-mounted equipment structures located in the right-of-way.
.4 Establishes 10' setback for equipment structures over 30 inches in height; exempts structures located in buildings from setback requirement.
.6 Establishes standards for equipment structures located on utility poles.
.8 Presents means for concealment of equipment structures, allowing the City to require or approve alternative means to more appropriately reflect site context.
.9 Clarifies that installation and operation of equipment structures must comply with City-adopted noise standards.

117.75 – Screening *(was "Landscaping/Buffering")*
.1 Allows concealment technology to be used instead of or in addition to required landscaping.
.3 Provides buffering standards for PWSF; clarifies that buffering is not required for PWSF that is located in the public right-of-way and that is subject to review as a Planning Official decision. Provides optional screening measures.
.4 Places limitations on height of fences used to screen ground-mounted PWSF.
.5 Clarifies that screening is to be maintained in good condition.
.6 Clarifies that the manner of screening for any PWSF reviewed through Process IIA or IIB shall be determined through that process.

117.80 – Departures From Chapter Provisions *(was "Modifications")*
.2 Establishes that the 15-foot limit for antennas above utility poles or electrical lines in residential zones cannot be modified through Process IIB.
.2 Removes reference to the 20-foot minimum distance between ground-mounted PWSF and any property line adjacent to or across the street from a residential use or zone.

117.85 – Non-Use/Abandonment
.2 Removes requirement for annual report confirming that the PWSF is still in use.

117.90 – Removal From City Property – When Required
New section, establishing that PWSF mounted to any City-owned property or structure shall be removed at no expense to the City, if the City determines removal is necessary.

117.95 – Appeals and Judicial Review *(was "Appeals")*
.1 Establishes appeal process for Planning Official decisions.

117.100 – Lapse of Approval
New section, similar to sections appearing in other KZC chapters.

117.105 – Complete Compliance Required
New section, similar to sections appearing in other KZC chapters.
.2 Establishes provisions for subsequent modification to approved PWSF.

117.110 – Time Limit
New section, similar to sections appearing in other KZC chapters.

117.115 – Compliance With Other City Codes
New section, similar to sections appearing in other KZC chapters.

117.120 – Conflict
Minor wording changes only.

117.125 – Violations and City Remedies
No changes.

HOUGHTON COMMUNITY COUNCIL
January 23, 2006

## CALL TO ORDER AND ROLL CALL

The meeting was called to order at 7:00 p.m. by Chair Rick Whitney. Members present: Chair Rick Whitney, Bill Goggins, David Hess, James Nickle, Betsy Pringle, Elsie Weber. Absent/excused: Hugh Givens Eric Shields, Stacy Clauson and contract planner Michael Bergstrom represented the Department of Planning and Community Development.

## READING AND/OR APPROVAL OF MINUTES:
None

## ANNOUNCEMENT OF AGENDA
Chair announced the agenda.

## COUNCIL MEMBER REPORTS AND COMMENTS
None

## WORK PROGRAM REVIEW
None

## REQUESTS FROM THE AUDIENCE
None

## HEARINGS
None

## UNFINISHED BUSINESS

### A. Chapter 117 Kirkland Zoning Code – Personal Wireless Service Facilities – File #IV-03-13

Mr. Bergstrom reported on an e-mail he received from Gary Abrahams on Sunday evening, January 22, 2006, that spoke to utility pole conduits and glu-lam poles, and panel antennas on rooftops as well as some editing issues on the Code. Mr. Bergstrom provided his replies to Mr. Abrahams' issues and an errata sheet to correct those issues brought to his attention as well as other issues concerning definitions of terms used in the regulations.

Mr. Bergstrom also referred to his January 17, 2006 memo to Mr. Shields and the Council and asked if Council had any questions. Ms. Pringle questioned the exemptions for satellite dish antennas described in Chapter 117.25 of KZC and inquired as to where the "1 meter" measurement came from. She feels that this is too large and antennas of this size would be unsightly in yards. It was stated that the satellite dish antennas may be covered under Chapter 115 as they may not be considered a personal wireless service. Mr. Shields will pursue this question and report back to the Council.

Ms. Clauson read a section of the Code that spoke to the height of dish antennas. It states that rod or dish antennas may not be placed above the maximum height allowed unless approved by the Planning Director. It must be demonstrated that the antennas will not impair views across subject property and that the antennas must be placed above the roofline in order to function properly. Neighbors could appeal any variance of the Code through the same appeal procedures as are applicable in Process One. Mr. Shields states he has not made this type of exemption decision in his 13 years on the job.

Chair raised the question as to who gets notice for a Process One permit. Ms. Clauson said that Process One notification is to adjoining property owners, publication in the newspaper and public notice signs posted on site.

**MOTION: Recommend to City Council to adopt the Personal Wireless Regulations as presented by Staff, incorporating the most recent changes presented by Mr. Bergstrom. It was moved, seconded and passed with one abstention.**

Council noted a concern of the "1 meter" exemption under Chapter 117.25 and advised Staff that this exemption would remain under their scrutiny.

**NEW BUSINESS**
None.

**ADMINISTRATIVE REPORTS AND COMMUNITY COUNCIL DISCUSSION**
None

**ADJOURNMENT**
**Motion to adjourn the meeting at 7:27 p.m. Motion carried unanimously.**

_____
Rick Whitney, Chair

_____
Eric Shields, Planning Director
Department of Planning and Community Development

Recording Secretary: Marlene Eisele

**January 23, 2006**

**Proposed Revisions to Jan 13, 2006 Draft of Chapter 117 KZC – Personal Wireless Service Facilities**

117.~~05~~ 15 Definitions

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below**. Terms not defined in this Section shall be defined as set forth in Chapter 5 KZC**:

117.70.3 PWSF Design Standards – Concealment Technology

d. Where feasible, cable and or conduit shall be routed through the inside of ~~the~~ **any new tower, utility pole, or other** support structure. Where this is not feasible, or where such routing would result in a ~~support~~ structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the ~~support~~ structure. The outside cable or conduit shall be the color of the **tower, utility pole, or other** support structure, and the City may require that the cable be placed in conduit.

117.70.7 PWSF Design Standards - Antennas On a Building, Mechanical Equipment Enclosure, or Water Reservoir

~~b~~ c. ~~Only o~~ Omni-directional antennas may be roof-mounted, but may not be mounted on top of rooftop appurtenances. No panel or directional antennas may be mounted on roofs or project above the roofline, except as provided in subsection ~~(f)~~ **(g)** below. The "roofline" of a water reservoir that incorporates a curved roof shall be the point at which the vertical wall of the water reservoir ends and the curvature of the roof begins.

~~f~~ g. Antennas, including flush-mounted panel or directional antennas, may be attached to an existing conforming mechanical equipment enclosure **or stair or elevator penthouse or similar rooftop appurtenance** which projects above the roof of the building, but may not project any higher than the enclosure.

i. Building parapets or other architectural features**, including rooftop mechanical equipment enclosures, stair or elevator penthouses, or similar rooftop appurtenances,** shall not be increased in size or height solely for the purpose of facilitating the attachment of PWSF components.

## Michael Bergstrom

**From:** "Michael Bergstrom" <bergstrommike@msn.com>
**To:** <gary.abrahams@comcast.net>
**Cc:** <ncox@ci.kirkland.wa.us>
**Sent:** Sunday, January 22, 2006 11:10 PM
**Subject:** Re: Kirkland Wireless regulations-revisions-Jan. 13th version

Gary - Thanks for your comments. See my responses to your comments, inserted into your e-mail below (these should appear as red italicized text).

----- Original Message -----
**From:** gary.abrahams@comcast.net
**To:** bergstrommike@msn.com
**Cc:** ncox@ci.kirkland.wa.us
**Sent:** Sunday, January 22, 2006 5:34 PM
**Subject:** Kirkland Wireless regulations-revisions-Jan. 13th version

Hi Mike:

I finally had a chance to review the changes contained in your January 13th draft. I believe you have done an excellent job of incorporating the changes into the revised text.

As I may not be able to attend the hearing on the 23rd, I wanted to make a few final points in writing prior to the hearing. Let me know what you think about the comments contained herein after your review. Also, I would appreciate it if you could let me know what happens on Monday night, if there are any further revisions that will be contained in the version that goes to council.

1. This involves concealment technology, section 117.70.3.d., regarding the conduit inside the pole. I read the draft and it makes sense, but I think the language is going to create a lot of questions for staff over the coming years that could have been eliminated. Here is what I am referring to: antennas on a utility pole, or replacement utility pole, require conduit that must be attached to the outside of the pole in Kirkland. The only alternative to that would be to use a glu-lam pole, which the City will not allow as it does not meet the concealment technology sections. It just seems that the current draft says you need to put the conduit inside the pole, unless it's not feasible. I still think it should be clearer regarding conduit on utility poles, considering the City's position on not allowing glu-lam poles.

*The City realizes that adding antenna to an existing utility pole cannot run conduit on the inside of the pole (unless the pole anticipated the additional antenna and conduit). However, a replacement utility pole does not necessarily require conduit to be attached to the outside of the pole. The City recognizes that a pole with internal conduit will have a greater diameter than a similar pole with external conduit. Depending on setting/context, one may be preferable to the other. This provision was intentionally worded to provide flexibility to response to contextual setting.*

*I will draft a clarification that this applies to new or replacement towers, utility poles, or other support structures, not existing structures.*

*The City does not categorically prohibit, or propose to categorically prohibit, glu-lam poles. The City realizes that there may be occasional settings where glu-lam is appropriate and could satisfy concealment requirements.*

2. Antennas on rooftops-I think you have made it clearer where antennas can be located. However, section 117.70.7.(c) refers to subsection (f), which does not seem to make sense. Did you mean to use (g) instead? The reason I am bringing this up is that c says no panels may be mounted on roofs or above the roofline, except under f. f states that antennas shall be consolidated in the center of the roof, after you said no antennas on the roof. Whereas (g) says that you can attach to a mechanical penthouse above the roof. After re-reading, my assumption is that you meant (g) rather than (f) noted in (c).

*Thanks for pointing that out. The reference should have been to "g", not "f". A change will be made.*

3. In (g) of 117.70.7, I would add that it's not just mechanical equipment enclosures, but it could include stair/elevator penthouses that project above the roofline where you could attach flush mounted panel antennas. I wouldn't limit it just to mechanical equipment enclosures.

*Agree. A change will be prepared.*

4. My last comment goes to the intent the City is trying to cover under the rooftop antennas. There is one area not covered in rooftops, which is the possibility of increasing the mechanical/stair/elevator penthouses for antennas. Did you mean to include that in section (i), that these components can not be increased just for the antennas? If so, I don't think that "building parapets or other architectural features" include all the options above the roofline. I think increasing the height of an existing mechanical/elevator/stair penthouse for flush mounted antennas is a great idea, but I don't know if you intended to eliminate that possibility. You might want to tighten that up one way or the other depending on the intent of the City.

*The intent is that these components cannot be increased just for the antennas. The reference to "building parapets or other architectural features" will be expanded to include stair and elevator penthouses and similar rooftop appurtenances ("rooftop appurtenances" is a defined term in the Zoning Code).*

Feel free to call me if you have any questions. Thanks for allowing me the opportunity to comment on the draft code.

*I'll mention one additional change that will be proposed, though it may not be of interest to you. In the definition section (117.15) I propose to include a statement that any term not defined by 117.15 shall be defined as set forth in Chapter 5 KZC (the definitions chapter of the overall zoning code).*

Regards,
Gary Abrahams
206-349-4279

# MEMORANDUM

**To:** Eric Shields, Planning Director
Houghton Community Council

**From:** Michael Bergstrom, Consultant

**Date:** January 17, 2006

**Subject:** Chapter 117 KZC – Personal Wireless Service Facilities Regulations, File No. IV-03-13

## I. RECOMMENDATION

Deliberate and make a recommendation to the City Council.

## II. BACKGROUND

On August 29, 2005 the Planning Director and Houghton Community Council conducted a public hearing on a draft ordinance, dated August 5, 2005, that would replace the existing Chapter 117 KZC. Due to questions raised at the hearing by industry representatives, it was determined that further revisions and a future hearing would be necessary.

On September 19, Staff met with industry representatives to discuss their concerns. The input received at that meeting led to a new draft dated December 23, 2005. The Planning Director and Houghton Community Council held a public hearing on January 10, 2006 to review the December 23, 2005 draft. The hearing body asked Staff to return on January 23 with additional revisions and information responding to questions raised by the hearing body and industry representation (Gary Abrahams), although the public hearing was officially closed on January 10.

Following the January 10 public hearing, Staff re-reviewed the draft ordinance and identified additional clarifications that should be made. In addition, Mr. Abrahams submitted suggested changes to provide clarity for PWSF service providers, leading to further changes to the draft ordinance. As a result, a revised draft ordinance, dated January 13, 2006, is presented to the Planning Director and Houghton Community Council Council for consideration (Attachment 1).

## III. ISSUES

At your January 10 hearing, three primary issues were raised by the hearing body and the one industry representative, including:

### A. Should rooftop panel antennas be accommodated?

Staff agrees that both the existing code and proposed draft are ambiguous with respect to rooftop panel antennas. The intent is that such antennas should be allowed as long as they are flush-mounted to a mechanical equipment screen, penthouse, or similar feature. They should not be

allowed where they are mounted as free-standing features on a roof. The January 13 draft clarifies this intent in 117.70.7.a, 7.c, and 7.f.

B. How are view impacts of towers that are located in non-residential zones, but which affect nearby residential zones, addressed and controlled?

The January 13 draft does not add or change any language to address this question. As you know, the draft ordinance is intended, through policy and prescribed review process, to achieve the following:

- Discourage any new towers in residential zones (such towers are limited to 40' height and require review through Process IIB);
- Allow new towers, regardless of zone, only when other solutions do not suffice, and require a more stringent public review process (117.45.2.b, 3.a, 4.b, footnote 4);
- Require third party review for towers (117.65);
- Require appropriate concealment and screening of towers (117.70 and 117.80).

In order to effectively discourage new towers in residential zones, the draft ordinance makes it somewhat easier to locate them in non-residential zones. This is consistent with the policy to have the City's process mirror the City's priorities. The safeguards built into the prescribed review processes should be adequate to protect nearby residential properties. Those safeguards include:

- Public notice and opportunity to comment;
- Requirements of 117.45.2.b, 3.a, 4.b., footnote 4, that a tower will not be approved unless the applicant demonstrates that other solutions are infeasible.
- Third party review, required by 117.65;
- Context, Design Compatibility, and Concealment, required by 117.70.1, .2, and .3.
- General provisions throughout Chapter 117 intended to reduce impacts of, and alternatives to, towers.

With respect to towers proposed in non-residential zones that might impact residential areas, we explored various language options such as "reduce view impact", "protect significant views", and "minimize impact upon existing views", but those options were considered to be highly subjective and difficult to enforce on an administrative level. Staff believes that the safeguards built into Chapter 117 and the required review processes protect community interests to the extent feasible.

C. Chapter 117 should be clearer in various sections, to convey what is permitted and what is not.

On January 10 both the hearing body and Mr. Abrahams identified areas of the draft ordinance that could be clarified. The proposed draft has been revised to respond to these issues, resulting in a January 13, 2006 draft. The changes are summarized in Section IV below.

## IV. DIFFERENCES BETWEEN JANUARY 13, 2006 AND DECEMBER 23, 2005 DRAFTS

### A. General:

1. Overall clarity: Changes have been made to various provisions of the draft ordinance to provide clarity. Some of these changes are a result of industry input, others result from Staff review.

2. Panel antennas on rooftops: The January 13 draft clarifies that panel antennas are permitted above the roofline as long as they are flush-mounted to a building wall, parapet, or existing mechanical equipment screen as long as the antenna does not extend above the features to which they are mounted.

3. Tower impacts on residential areas: See Section III.B above. Staff believes that the protections built into the regulations and the processes through which towers are reviewed provide sufficient protection of the interests of residential areas.

B. Specific – The following specific changes have been made in response to input from the January 10 hearing and subsequent Staff input. Changes are presented in order of the Chapter sections they affect:

1. 117.15.15: Clarifies that a "tower" does not include a replacement utility pole as authorized by KZC 117.70.7.

2. 117.40: This section has been deleted. Much of this section is already covered elsewhere. The remainder has been moved to a new Footnote 4 in 117.45. Renumbering of sections resulting from this deletion will occur prior to final ordinance adoption.

3. 117.45: Several changes, including:
   a. Introductory paragraph has been expanded to alert readers to certain additional requirement affecting PWSF location and design.
   b. The "Review Process" column of the process table includes a very brief description of what the review process entails, including a reference to the applicable KZC chapter for more information about the process.
   c. The "Facility Type" column of the process table contains specific references to important code requirements, as requested by industry.
   d. Terminology of subsection 4.c of Section 117.45 has been changed from "Modification" to "Departure" to clarify intent.
   e. A new footnote "4" has been added. The provisions of this footnote are currently in 117.25 of the existing Chapter 117 (117.40 of the 12/12/05 draft ordinance), but were moved here for clarity.

4. 117.70.3: Minor wording changes.

5. 117.70.3.a: Sentence added to acknowledge antennas completely enclosed within a tower.

6. 117.70.4.a: Example added to illustrate effect of new setback requirements for towers.

7. 117.40.4.b: Minor wording change to clarify setback requirements.

8. 117.70.5: Examples added to illustrate types of information that might be acceptable to demonstrate that a tower and antennas are the minimum height necessary.

9. 117.70.6: Paragraph restructured to provide more clarity with respect to antenna clearance above existing or replacement utility poles and/or electrical conductors.

10. 117.70.7.a: Clarifies that antennas, including panel antennas, may be attached to the sides, parapets, or mechanical penthouses of buildings.

11. 117.70.7.g (was 70.7.f): Clarifies that flush-mounted panel or directional antennas are among the antennas that are allowed to be attached to a mechanical equipment enclosure that projects above the roof of a building.

12. 117.70.10: Minor wording change.

13. 117.75.1: Removes cubic foot limit for equipment structures in residential zones; controls size by height and area.

14. 117.75.3: Minor wording change.

15. 117.75.8: Minor wording change.

16. 117.85: Changes terminology from "Modifications" to "Departures" for clarity.

V. CONCLUSION

The attached January 13, 2006 draft ordinance responds to concerns raised at the January 10 public hearing. It maintains past and present City policy with respect to PWSF while accommodating changing PWSF technology and market demands for PWSF service. The new draft ordinance balances the industry's desire to provide service with the community's desire to receive service, while making sure both needs will be met in a manner acceptable with overall community values.

We look forward to discussing with you further on January 23.

Attachments:

1. January 13, 2006 Draft Ordinance – Chapter 117 KZC

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Stacy Clauson, PCD
Jon Regala, PCD

**DRAFT 01/13/06**

## Chapter 117 - PERSONAL WIRELESS SERVICE FACILITIES

*NOTE: This view of the draft ordinance displays the proposed text changes between the existing Chapter 117 KZC and the proposed ordinance. Existing text that would be deleted is marked with a strike-through (~~this is an example~~) and new proposed wording is highlighted by an underline (this is an example), subject to further revision resulting from the public review process.*

Sections:


117.05 User Guide
117.10 Policy Statement
117.~~05~~ 15 Definitions
117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability
~~117.65 Other Wireless Communications Facilities~~
117.25 Exemptions
117.30 Prohibited Devices
117.~~55~~ 35 Permit Required~~ment~~
~~117.25 40 Co-Location~~ *(section deleted)*
117.~~20~~ 45 ~~Priority of Locations~~ Application Review Process
117.50 Pre-Submittal Meeting
117.~~45~~ 55 Application Requirements
117.60 Determination of Application Completeness
117.~~50~~ 65 Third Party Review
117.~~30~~ 70 ~~Design~~ PWSF Standards
117.75 Equipment Structure Standards
117.~~35~~ 80 ~~Landscaping/Buffering~~ Screening
117.~~70~~ 85 ~~Modifications~~ Departures From Chapter Provisions
117.~~40~~ 90 Non-Use/Abandonment
117.95 Removal From City Property - When Required
117.~~75~~ 100 Appeals and Judicial Review
117.105 Lapse of Approval
117.110 Complete Compliance Required
117.115 Time Limit
117.120 Compliance With Other City Codes
117.~~80~~ 125 Conflict
117.~~60~~ 130 Violations and City Remedies


### 117.05 User Guide

This Chapter establishes the conditions under which Personal Wireless Service Facilities (PWSF) may locate and operate in different areas of the city. The provisions of this Chapter add to and in some cases supersede the other regulations of this code. If you wish to install, operate, or alter PWSF in Kirkland, you should read the provisions of this Chapter.

### 117.10 Policy Statement

~~The City has received requests to site towers and antennas.~~ The purpose of this Chapter is to provide specific regulations for the placement, construction, modification and removal of ~~personal wireless service facilities~~ PWSF. Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 332(c)(7), the provisions of this Chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent personal wireless services.

1. The goals of this Chapter are to:

~~(i)~~ a. ~~e~~Encourage the location of towers in nonresidential areas and to minimize the total number of tall towers throughout the City,

~~(ii)~~ b. ~~e~~Encourage the joint use of existing tower sites,

~~(iii)~~ c. ~~e~~Encourage users of towers and antennas to locate them, to the extent possible, in areas where the impact on the City is minimal,

~~(iv)~~ d. ~~e~~Encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas,

~~(v)~~ e. ~~s~~Strongly encourage the providers of personal wireless services to use concealment technology,

~~(vi)~~ f. ~~p~~Provide standards for the siting of ~~personal wireless service facilities~~ PWSF and other wireless communications facilities (such as television and AM/FM radio towers), and

~~(vii)~~g. ~~f~~Facilitate the ability of the providers of personal wireless services to provide such services throughout the City quickly, effectively and efficiently.

h. Prioritize the location of PWSF on existing structures such as ball field lights, transmission towers, utility poles or similar structures, particularly when located on public property.

2. Accordingly, the City Council finds that the promulgation of this Chapter is warranted and necessary to:

~~1~~ a. ~~To~~ ~~m~~Manage the location of towers and antennas in the City;

~~2~~ b. ~~To~~ pProtect residential areas and other land uses from potential adverse impacts of towers and antennas;

~~3~~ c. ~~To~~ ~~m~~Minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;

4 d. ~~To~~ ~~a~~Accommodate the growing need for towers and antennas;

~~5~~ e. ~~To~~ ~~p~~Promote and encourage shared use and co-location on existing towers as a desirable option rather than construction of additional single-use towers; and

~~6~~ f. ~~To~~ ~~a~~Avoid potential damage to adjacent properties through engineering and proper siting of ~~personal wireless service facilities~~ PWSF.

117.~~05~~ 15 Definitions

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below:

1. "Antenna" shall mean any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole,

light standard, building or other structure for the purpose of providing personal wireless services and its attendant base station. Types of antennas include:

a. An "omni-directional antenna" receives and transmits radio frequency signals in a 360-degree radial pattern. ~~For the purposes of this chapter, a~~

b. A "whip antenna" is an omni-directional antenna that is up to 15 feet in height and up to four inches in diameter.

~~b.~~ c. A "directional or panel antenna" receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.

2. "Antenna height" shall mean the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater. ~~Measurement of antenna height shall include the base pad, support structure, antenna, lightning rods, and other appurtenances.~~

3. "Building" shall mean a roofed structure used or intended for human occupancy.

~~3~~ 4. "Cell site" shall mean a tract or parcel of land or building that contains the ~~personal wireless service facilities~~ PWSF including any antenna, antenna support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

~~4~~ 5. "Co-location" shall mean the use or placement of PWSF ~~a common personal wireless service facility or~~ on a tower by two or more personal wireless service providers or by one personal wireless service provider for more than one type of communication technology.

~~5~~ 6. "Equipment structure" shall mean a facility, shelter, cabinet or vault used to house and protect ~~the~~ electronic or other associated equipment necessary for processing wireless communications signals. "Associated equipment" may include, for example, air conditioning, backup power supplies, and emergency generators.

~~6~~ 7. "Existing structure" shall mean, but is not limited to, any existing building, ~~electrical transmission tower, flagpole, light standard,~~ utility pole, water ~~tank~~ reservoir, other support structure, and structures accessory ~~structures~~ thereto.

~~7~~ 8. "FAA" shall mean the Federal Aviation Administration.

~~8~~ 9. "FCC" shall mean the Federal Communications Commission.

~~9~~ 10. "Nonresidential" or "nonresidential zone" shall mean (1) all portions of the City (including rights-of-way adjacent thereto, measured to the centerline of the right-of-way) in an area not zoned residential as defined in this Chapter, or (2) the I-405 or SR 520 right-of-way.

11. "Other support structure" shall mean a structure used to support PWSF or equipment structures, excluding buildings, utility poles, and water reservoirs. Examples of "other support structure" include flagpoles and ballfield light standards,

~~10~~ 12. "Personal wireless services" and "personal wireless service facilities" (PWSF), as used in this Chapter, shall be defined in the same manner as in Title 47, United States

Code, Chapter 5, Subchapter III, Part I, Section 332(c)(7)(C), as they may be amended now or in the future.

13. "Replacement structure" shall mean a structure that replaces or is intended to replace an existing structure of a similar design and similar primary purpose, to enable the installation of new or additional PWSF on that structure. If a "replacement structure" meets the definition of "tower", it shall be regulated as a new tower.

~~11~~ 14. "Residential" shall mean portions of the City in the following zones: RS 35; RSX 35; RS 12.5; RSX 12.5; RS 8.5; RSX 8.5; RS 7.2; RSX 7.2; RS 5.0; RSX 5.0; RM 5.0; RM 3.6; RM 2.4; RM 1.8; WD I; WD II; WD III; PLA 1; PLA 2; PLA 5A, D, E; PLA 6A, C, D, E, F, H, I, J, K; PLA 7A, B, C; PLA 9; PLA 15B; PLA 16; PLA 17; and P; and rights-of-way adjacent thereto, measured to the centerline of the right-of-way.

~~12~~ 15. "Tower" shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including any antenna support structure, self-supporting lattice towers or monopole towers. ~~, and does not include utility poles.~~ A "tower" shall not include a replacement utility pole as authorized by KZC 117.70.6.

16. "Utility pole" shall mean a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability

1. New ~~Facilities~~ Antennas and Towers – All new ~~personal wireless service facilities, including without limitation~~ antennas and towers~~,~~ shall comply with this Chapter unless the applicant had a vested application to site ~~a personal wireless service facility~~ said PWSF under a prior version of this ~~code~~ chapter, or unless specifically exempted by KZC 117.25.

2. Existing ~~Facilities~~ Antennas and Towers –
   a. All ~~personal wireless service facilities, including without limitation~~ existing antennas and towers~~,~~ shall be allowed to continue their usage as they ~~presently~~ exist as of the effective date of this ~~C~~chapter. Routine maintenance and reconfiguration of antennas shall be permitted on such existing antennas and towers, subject to the limitations below.
   b. ~~However, a~~Any reconfiguration pursuant to paragraph (a) above that increases the height or number of antennas ~~height~~ shall be treated ~~like~~ and processed as a new facility.
   c. Existing antennas that conform to the provisions of this chapter may be replaced by new antennas, if such new antennas are approved as a minor modification pursuant to KZC 117.110.
   d. The replacement of existing antennas that do not conform to the provisions of this chapter shall be treated and processed as a new facility.
   e. The replacement of an existing tower, whether that tower conforms or does not conform to the provisions of this chapter, shall be treated and processed as a new facility.

3. Equipment Structures –
   a. Existing equipment structures shall be allowed to continue their usage as they exist as of the effective date of this Chapter. Routine maintenance, reconfiguration of, or additions to equipment structures shall be permitted, subject to the limitations below.

b. Existing equipment structures may be replaced, and new equipment structures may be added to an approved antenna and/or tower, provided that the new equipment structures conform with the provisions of this chapter, and are approved as a minor modification pursuant to KZC 117.110

c. Reconfiguration or addition of equipment structures that increases the size of the equipment structure enclosure shall be treated and processed as a new facility.

d. Reconfiguration of or additions to a non-approved antenna or tower are not permitted, unless the entire facility obtains approval as a new facility through the appropriate review process.

4. ~~117.65~~ Other Wireless Communication Facilities - All of the provisions of this Chapter, which address personal wireless services and ~~personal wireless service facilities~~ PWSF, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television, satellite radio, global positioning systems (GPS), and AM/FM radio towers) to the maximum extent allowed by law.

117.25 Exemptions

The following are exempt from the provisions of this Chapter and shall be permitted in all zones, subject to any other applicable provisions of this Code:

1. Temporary PWSF during an emergency declared by the City.

2. Temporary PWSF located on the same site as, and during the construction of, a permanent PWSF for which appropriate permits have been granted.

3. Licensed amateur (ham) radio stations.

4. Satellite dish antennas less than two meters in diameter when located in non-residential zones, and satellite dish antennas less than one meter in diameter when located in residential zones, including direct to home satellite services, when used as an accessory use of the property.

117.30 Prohibited Devices

Except as exempted pursuant to KZC 117.25, PWSF that are not permanently affixed to a support structure and which are capable of being moved from location to location (e.g., "Cell on Wheels") are prohibited.

117.~~55~~ 35 Permit ~~Requirement~~ Required

In all instances, a permit must be obtained from the City before any ~~personal wireless service facilities~~ PWSF may be constructed on any public or private land or right-of-way, including I-405, SR 520, and the Burlington Northern Railroad right-of-way, within the City limits.

~~117.25~~ 40 ~~Co-Location~~

~~To minimize potential adverse visual impacts associated with towers, co-location of antennas by more than one provider on personal wireless service towers shall take precedence over the construction of new personal wireless service towers. Providers are encouraged, by the opportunity for expedited review as provided in this Chapter, to co-locate antennas onto personal wireless service towers. Unless the applicant has shown by substantial evidence that it has made a good faith effort to mount the antenna on an existing personal wireless service tower the City may deny the application to construct a new personal wireless service tower.~~

117.~~20~~ 45 ~~Priority of Locations~~ Application Review Process

~~1.~~ An application to site a ~~personal wireless service facility~~ PWSF shall be ~~subject~~ processed according to the ~~criteria contained in the~~ table below, after the applicant has satisfied the pre-submittal meeting requirements of KZC 117.50. ~~Only when the application does not meet a criteria shall the next group of criteria be considered. The hierarchy of criteria is divided into three separate approval processes: administrative decision, Process I permit and Process IIB permit. The order of criteria for locating personal wireless service facilities shall be as follows~~: This table does not include all requirements for PWSF. Additional requirements and standards affecting design and location of PWSF can be found in Sections 117.70 (PWSF Standards), 117.75 (Equipment Structure Standards), and 117.80 (Screening).

| **Review Process** | **Facility Type** [1] |
|---|---|
| 1. Planning Official Decision<br><br>*(Construction permit review only, Planner issues decision).* | a) Co-location of antennas on existing towers in nonresidential zones. |
| | b) Attachment of antennas to existing (but not replacement) buildings or mechanical equipment enclosures in a nonresidential zone. See KZC 117.70.7. |
| | c) Attachment of antennas to existing water reservoirs, utility poles, or other support structures in any zone.[2] See KZC 117.70.6. |
| | d) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed 18 inches or increase the diameter of the existing pole by more than 50%, whichever is less.[2] See KZC 117.70.6. |
| 2. Process I Permit<br><br>*(Planning Director Decision following public notice and comment, per Ch. 145 KZC)* | a) Co-location of antennas on existing towers in residential zones, not resulting in any increase to tower height. |
| | b) New towers in nonresidential zones, not exceeding 40 feet in height.[4] |
| | c) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed 24 inches or increase the diameter of the existing pole by more than 100%, whichever is less.[2] See KZC 117.70.6. |
| | d) Attachment of antennas to non-residential buildings, such as schools or churches, in residential zones.[3] See KZC 117.70.7. |
| 3. Process IIA Permit<br><br>*(Hearing Examiner holds public hearing and issues decision, per Ch. 150 KZC)* | a) New towers in nonresidential zones, exceeding 40 feet in height.[4] |
| | b) Attachment of antennas to replacement buildings or mechanical equipment enclosures in non-residential zones. |
| | c) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will exceed the diameter of the existing pole by more than 100% or 24 inches, whichever is less. |
| | d) Attachment of antennas to multi-family residential buildings in any zone.[3] |
| 4. Process IIB Permit<br><br>*(Hearing Examiner holds public hearing, City Council issues decision, per Ch. 152 KZC)* | a) Co-location of antennas on existing towers in residential zones resulting in an increase in tower height.[3] |
| | b) New towers in residential zones, not exceeding 40 feet in height.[3, 4] |
| | c) Departures from standards contained in this Chapter, subject to the limitations of KZC 117.85. |
| | d) Any facility that does not qualify for review as a Planning Official decision, Process I permit, or Process IIA permit as listed above.[3] |

Footnotes:

1 Although this table specifically addresses antennas and towers, it is presumed that for each facility there will be associated equipment structures, and there may be structural alterations to existing support structures. Such equipment structures and structural alterations shall be reviewed through the same process as the facility with which they are associated, subject to the limitations of KZC 117.20.

2 Attachment of antennas to existing water reservoirs or other support structures, or to existing or replacement utility poles, where such attachment results in a height increase to the original support structure, may be approved only once through the review process indicated. Any subsequent proposal that would result in a height increase shall be reviewed through Process IIB.

3 If in a residential zone, the applicant shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints or technological feasibility, no other location is available.

4. An application for a new tower shall not be approved unless the applicant demonstrates, to the satisfaction of the City, that an attempt was made to co-locate the proposed antenna on an existing structure, and that such attempt was spatially, structurally, or technically infeasible.

| | |
|---|---|
| ~~a. Administrative Decision~~ | ~~1) Co-location of antennas on personal wireless service towers in nonresidential zones.~~<br>~~2) Attachment of antennas to existing structures in nonresidential zones:~~<br>~~• Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>~~• Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>~~• All appurtenances and screening (including personal wireless service facilities) may not exceed 5% of the total roof area of a building and/or 5% of any façade of a building.~~<br>~~3) Equipment structures may not exceed 500 cubic feet with a 5-foot height limit in residential zones.~~<br>~~4) Antennas may be attached to ball field light standards, electrical transmission towers, water tanks or existing utility poles in residential zones. Whip antennas may exceed the structure height by a maximum of 15 feet and other antennas may exceed the structure height by a maximum of 10 feet.~~ |
| ~~b. Process I Permit~~ | ~~1) New personal wireless service towers and associated equipment in nonresidential zones:~~<br>~~• Located at least a distance equal to 100% of antenna height from any property line adjacent to or across the street from a residential use or residential zone;~~<br>~~• Antenna height is a maximum of 40 feet.~~<br>~~2) Attachment of antennas to existing structures in nonresidential zones:~~<br>~~• Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>~~• Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>~~• All appurtenances and screening (including personal wireless service facilities) may not exceed 10% of the total roof area of a building and/or 10% of any façade of a building.~~ |
| ~~c. Process IIB Permit~~ | ~~1) Any personal wireless service facility that is unable to meet the preceding priority of locational criteria for an administrative decision or Process I permit; see also KZC 117.70.~~ |

~~2. Further Process IIB Permit Requirements – An applicant for a new facility to be located in a residential zone shall demonstrate that a diligent effort has been made to located the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available. The personal wireless services provided is required to demonstrate that it contacted the~~

~~landowners or owners of structures in excess of 30 feet within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site.~~

117.50 Pre-Submittal Meeting

Before an application requiring review through Planning Official Decision, Process I, Process IIA, or Process IIB will be accepted for processing, the applicant shall attend a pre-submittal meeting with the Planning Official, as required by KZC 145.12, 150.12, or 152.12.

117.~~45~~ 55 Application Requirements

a. ~~In the course of reviewing any request for any approval required under this Chapter made by an applicant to install personal wireless service facilities, t~~The City shall act within a reasonable period of time on a complete application submitted pursuant to this Chapter, taking into account the nature and scope of the request~~, after an application has been determined to be complete~~. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

b. All applications required pursuant to this Chapter ~~for administrative decision, Process I and Process IIB permits to locate a personal wireless service facility (including, but without limitation, an antenna or tower in the City)~~ shall be made using forms provided by ~~submitted to~~ the Planning Department and shall be accompanied by the information and support materials identified on said forms.~~with the applicable requested information (depending upon the type of facility which is involved). A detailed plan that complies with the submittal requirements of this Chapter, and other regulations and ordinances of the City, along with other pertinent information requested by the City shall also be submitted. An applicant's submission may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information depending upon the type of facility which is involved:~~

~~1. All applicants must register their request with the City on a form provided by the City at the time of building permit or right-of-way use permit application.~~

~~2. A scaled site plan clearly indicating the location, type and height of the proposed tower, antennas, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, the equipment structure, fencing, buffering and the type of concealment technology which will be utilized. The full, detailed site plan shall not be required if the antenna is to be mounted on an existing structure.~~

~~3. Photosimulations of the proposed facility from affected residential properties and public rights-of-way.~~

~~4. A current map and/or aerial photograph showing the location of the proposed tower.~~

~~5. Legal description of the parcel, if applicable.~~

~~6. Approximate distance between the proposed tower and antennas, as applicable, and the nearest residential unit, or residentially zoned properties.~~

~~7. Information of sufficient detail to demonstrate that the equipment structure is the minimum size necessary.~~

~~8. A landscape plan showing specific landscape, screening and fencing materials.~~

~~9. A notarized letter signed by the applicant stating that the personal wireless service facilities PWSF will comply with all applicable federal and state laws, including specifically FCC and FAA regulations, and all City codes.~~

~~10. A notarized letter signed by the applicant stating that the antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.~~

~~11. Manufacturers information indicating compliance with adopted noise standards.~~

~~12. The personal wireless services provider must demonstrate that it is licensed by the FCC, if required to be licensed under FCC regulations.~~

~~13. The applicant, if not the personal wireless services provider, shall submit proof of a lease agreement with an FCC-licensed personal wireless services provider if such provider is required to be licensed by the FCC.~~

~~14. Propagation maps shall be provided showing that the tower and antennas are required for present and future network coverage in order to satisfy the requirements of the provider's grid system. The maps shall also demonstrate that the height specified is the minimum height necessary for the tower and antennas, as applicable. The maps shall additionally show coverage areas at the requested height and at lower heights. Finally, they shall show the neighboring or regional facilities with which the facilities in the City can communicate.~~

~~15. If the site is within or adjacent to a residential zone, then a study shall be provided showing why alternative locations are not acceptable.~~

~~16. All providers shall submit satisfactory evidence that the facility is designed for and will provide services primarily for residents of the City and/or visitors within City limits.~~

~~17. See also KZC 117.40(2), Further Process IIB Permit Requirements, and KZC 117.55, Third Party Review.~~

117.60 Determination of Application Completeness

1. Planning Official Decisions: Within 28 calendar days after the date of submittal of the application, the Planning Official shall determine whether the application is complete. If the application is not complete, the Planning Official shall identify and communicate the needed components to the applicant. Once the application is complete, the Planning Official shall process the application.

2. Process I, Process IIA, and Process IIB Permits: The determination of completeness for Process I, Process IIA, and Process IIB permit applications shall occur pursuant to the process set forth in Chapters 145, 150, and 152 KZC, respectively.

117.~~50~~ 65 Third Party Review

In certain instances (~~including all~~ particularly Process IIA and IIB permit applications) there may be a need for expert review by a third party of the technical data submitted by the ~~personal wireless services provider~~ applicant. The City may require such a technical review,

to be paid for by the applicant. ~~for the personal wireless service facilities~~. The selection of the third party expert shall be by mutual agreement between the applicant and the City, and such agreement not to be unreasonably withheld by either party. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering.

The expert review is intended to be a site-specific review of technical aspects of the personal wireless services, facilities, and other matters ~~as~~ described herein, and not a subjective review of the site selection. In particular, but without limitation, the expert shall be entitled to provide a recommendation on the height of the proposed facilities relative to the applicant's coverage objectives and system design parameters. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions, and any specific technical issues outlined by the City or other interested parties.

To facilitate the expert review, an applicant for a Process IIB permit for a new tower in a residential zone, or for the co-location of antennas on existing towers in residential zones resulting in an increase in tower height, the applicant shall submit a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land and buildings and structures taller than 30 feet within ¼ mile of the proposed site. The applicant shall demonstrate that he/she contacted the landowners or owners of structures taller than 30 feet within a ¼ mile radius of the proposed site, and was denied permission by those owners to locate the facility on their land or their structures.

Based on the results of the third party review, the City may require changes to the application ~~for the personal wireless service facilities that~~ to comply with the recommendations of the expert.

117.~~30~~ 70 ~~Design~~ PWSF Standards

1. Context - The location and design of a cell site~~s in the City~~ shall consider ~~the~~ its visual and physical impact ~~of the site~~ on the surrounding neighborhood and shall, to the extent feasible, reflect the context within which it is located.

2. Design Compatibility - ~~Facilities~~ PWSF shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, ~~and~~ design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape to the maximum extent practical.

3. Concealment Technology. ~~- Concealment technology applies to all personal wireless service facilities, including, without limitation, antennas, towers and equipment structures. For any facility, "concealment technology" means the use of both existing and future technology through which a personal wireless service facility is designed to resemble an object which is already present in the local environment, such as a tree, streetlight, or traffic signal. It also includes:~~ One or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the PWSF:

   a. For personal wireless service towers:

      If within an existing stand of trees, ~~"concealment technology" means that~~ the tower ~~is to~~ shall be painted a dark color, ~~is~~ and be made of wood or metal.~~, and that a~~ A greenbelt easement is required to ensure permanent retention of the surrounding trees.

~~"Concealment technology" for~~ t Towers in a more open setting ~~means that they must~~ shall have a backdrop (for example, but not limited to, trees, a hillside, or a structure) on at least two sides, be a compatible color with the backdrop, be made of compatible materials with the backdrop, and ~~that~~ provide architectural or landscape screening ~~be provided~~ for the ~~other two~~ remaining sides. If existing trees are the backdrop, then a greenbelt easement is required to ensure permanent retention of the surrounding trees. ~~In all cases w~~Where a greenbelt ~~easement is required, it~~ The greenbelt easement shall be the minimum necessary to provide screening and may be removed at the landowner's request in the event the facility is removed.

Antennas shall be integrated into the design of any ~~personal wireless service~~ tower to which they are attached. External projections from the tower shall be limited to the greatest extent technically feasible. Where antennas are completely enclosed within the tower, the need for the backdrop described in the preceding paragraph may be reduced or eliminated, depending on the tower design and context.

b. For rooftop antennas or antennas mounted on other structures:

~~For o~~ Omni-directional antennas mounted on the roof ~~15 feet or less above the roof, "concealment technology" means use~~ shall be of a color compatible with the roof, structure or background.

~~For o~~ Other antennas~~, "concealment technology" means~~ shall use ~~of~~ compatible colors and architectural screening or other techniques approved by the City.

Antennas shall be integrated into the design of ~~any existing structure or support~~ the structure to which they are attached. External projections from the ~~existing structure or support~~ structure shall be limited to the greatest extent technically feasible.

c. ~~For a~~ Antennas mounted on one or more building facades~~: "Concealment technology" means~~ shall (a) use ~~of~~ color and materials ~~such that the facility has~~ to provide architectural compatibility with the building; ~~It shall~~ (b) be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible; and ~~shall~~ (c) not project above the wall on which it is mounted.

~~d. For equipment structures: "Concealment technology" means locating within a building, or if on top of a building, with architecturally compatible screening. An underground location, or locating above ground with a solid fence and landscaping, is also considered concealment technology.~~

d. Where feasible, cable and or conduit shall be routed through the inside of the support structure. Where this is not feasible, or where such routing would result in a support structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the support structure. The outside cable or conduit shall be the color of the support structure, and the City may require that the cable be placed in conduit.

e. Alternative measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process of that the optional measures will be at least as effective in concealing the PWSF as the measures required above.

f. Nonwithstanding the above, the manner of concealment for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

4. Setbacks - ~~Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ The following regulations apply, except for structures located in public right-of-way:

a. New towers in any zone shall be setback a minimum of 20 feet from any property line, plus an additional one-half foot for each foot of tower height above 40 feet (e.g., if the tower is 40' in height, the setback will be 20' from any property line; if the tower is 50' in height, the setback shall be 25' from any property line).

b. Replacement structures intended to accommodate a PWSF shall be setback a distance equal to or greater than the setback of the original structure from any property line adjacent to or across the street from a residential use or residential zone; and the lesser of ten (10) feet or the distance of the original structure from any property line adjacent to or across the street from all other uses or zones.

~~9~~ 5. Tower and Antenna Height - The applicant shall demonstrate, to the satisfaction of the City, that the tower and antenna are the minimum height required to function satisfactorily. Personal wireless service towers shall not exceed 40 feet in residential zones, as measured from the Average Building Elevation at the tower base to the highest point of the tower, antenna, or other physical feature attached to or supported by the tower. Examples of information that can be used to demonstrate that the tower and antennas are the minimum height necessary include, but are not limited to, propagation maps showing the necessity of the height to provide the required coverage, and a letter from a Radio Frequency engineer stating and explaining the necessity of the proposed height.

6. Antennas On a Utility Pole - Antennas mounted to an existing or replacement utility pole shall be subject to the following height limits:
a. In any zone, 15' above the top of a pole not used to convey electrical service;
b. In a residential zone, 15' above the electrical distribution or transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service; and
c. In a nonresidential zone, 15' above an electrical distribution conductor or 21' above an electrical transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service.

~~10~~ 7. Antennas On ~~or Above~~ a ~~Structure~~ Building, Mechanical Equipment Enclosure, or Water Reservoir - ~~Antennas and equipment structures on or above a structure shall be subject to the following criteria:~~

a. Antennas, including panel or directional antennas, may be attached to the sides, parapets, mechanical penthouses, or similar elements, of buildings, subject to the limitations of this Chapter.

~~a~~ b. Antenna ~~and equipment structure~~ height is measured above the top of the roof, not from the parapet or from the Average Building Elevation of the building, mechanical equipment enclosure, or water reservoir.

~~b~~ c. ~~Only o~~ Omni-directional antennas may be roof-mounted, but may not be mounted on top of rooftop appurtenances. No panel or directional antennas may be mounted on roofs or project above the roofline, except as provided in subsection (f) below. The "roofline" of a water reservoir that incorporates a curved roof shall be the point at which the vertical wall of the water reservoir ends and the curvature of the roof begins.

d. Whip antennas may exceed the structure height by 15 feet, and other omni-directional antennas may exceed the structure height by 10 feet.

~~c~~ e. ~~All r~~Roof-mounted antennas must be set back from the edge of the roof a distance equal to 100 percent of antenna height.

~~d. Roof-mounted antennas and equipment structures shall be incorporated into the pitched or stepped roof form, and not appear as a separate penthouse or box.~~

~~e~~ f. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered.

~~f~~ g. Antennas, including flush-mounted panel or directional antennas, may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

~~g~~ h. ~~In no instance shall equipment structures, antenna and related equipment~~ Except for PWSF installed in an existing rooftop penthouse, PWSF shall occupy no more than ~~25~~ 10 percent of the total roof area of a building. Rooftop conduit shall be excluded from this calculation.

i. Building parapets or other architectural features shall not be increased in size or height solely for the purpose of facilitating the attachment of PWSF components.

~~h~~. 8. Historic or Landmark Locations - No antennas shall be permitted on property designed as a historic resource or community landmark as identified in the Comprehensive Plan, unless such antennas have been approved in accordance with design requirements pertaining to historic structures.

~~i~~. 9. Signal Interference - No antennas shall cause localized interference with the transmission or reception of any other communications signals including, but not limited to, public safety signals, and television and radio broadcast signals.

~~j~~. 10. Support Wires - No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by construction codes adopted by the City. ~~the UBC to anchor the antennas, antenna arrays or support structures.~~

~~5~~ 11. Views - ~~Personal wireless service facilities~~ PWSF, including towers, must be located and oriented in such a way as to minimize view blockage.

~~6~~ 12. Lights, Signals and Signs - No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.

~~7. Equipment Structures -~~ *(moved to 117.75, below).*

13. Noise – The installation and operation of PWSF shall comply with the noise standards set forth in KZC 115.95.

~~8~~ 14. Federal Requirements - All ~~towers and antennas~~ PWSF must meet ~~or exceed~~ current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, ~~then~~ the owners of the ~~towers and antennas governed by this Chapter~~ PWSF shall bring such ~~towers and antennas~~ PWSF into compliance with such ~~revised standards and regulations~~ changes in accordance with the compliance deadlines and requirements of such ~~standards and regulations~~ changes. Failure to bring towers and antennas into compliance ~~with such revised standards and regulations~~ shall constitute grounds for the removal of the tower or antenna at the owner's expense. ~~Additionally, I~~If, upon inspection, the City concludes that a ~~tower~~ PWSF fails to comply with such regulations and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the ~~tower~~ PWSF, the owner shall have 30 days to bring such ~~tower~~ PWSF into compliance with such standards and regulations. If the owner fails to bring such ~~tower~~ PWSF into compliance within said 30 days, the City may remove such ~~tower~~ PWSF at the owner's expense.

~~7~~ 117.75 Equipment Structures Standards ~~- The standards for equipment structures are as follows:~~

1. Maximum Size in Residential Zones - ~~e~~Equipment structures ~~may~~ shall not exceed ~~500 cubic feet~~ 5 feet in height. ~~with a 5-foot height limit in residential zones.~~ Equipment structure enclosures shall not exceed 125 square feet each. These limitations shall apply to each individual equipment structure and enclosure, provided that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to these limitations.

~~b~~2. Maximum Size in Nonresidential Zones - Gross floor area of equipment structures shall be the minimum necessary but not greater than 240 square feet per provider. Maximum height is 10 feet above average building elevation. These limitations shall not apply to equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone.

3. Equipment Structures Located in Right-of-Way - If ground-mounted, equipment structures shall not exceed a height of 30 inches. If mounted on poles, said structures shall comply with 117.75.6. Setback requirements do not apply to equipment structures located in the right-of-way.

4. Setbacks When Located on Private Property – Ground-mounted ~~personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ equipment structures over 30 inches in height shall be setback at least 10 feet from all property lines; provided, that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to this requirement.

5. Equipment structures on or above a structure - Equipment structures on or above a structure shall be subject to the following criteria:

   a. ~~Antenna and e~~Equipment structure height is measured above the top of the roof, not the parapet.

~~d~~ b. When mounted to the roof of a building with a pitched or stepped roof form, R~~r~~oof-mounted ~~antennas and~~ equipment structures shall be incorporated into the ~~pitched or stepped~~ roof form, and not appear as a separate penthouse or box.

6. Equipment structures mounted on poles or towers -

a. Equipment structures may be mounted on utility poles or towers. The location and vertical clearance of such structures shall be reviewed by the Public Works Department and verified by the underlying utility owner to ensure that the structures will not pose a hazard to other users of the right-of-way.

b, Equipment structures mounted on utility poles or towers shall be located in a manner that minimizes clutter and visual impact.

~~a~~7. Compatibility - Equipment structures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.

8. Concealment - ~~For equipment structures: "Concealment technology" means~~ One or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment structure:

(a) ~~l~~Locating within a building or building appendage constructed in accordance with all applicable City codes, ~~or if~~

(b) Locating on top of a building, with architecturally compatible screening~~.~~ ,

(c) Locating ~~A~~n underground ~~location~~, ~~or~~

(d) ~~l~~Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.80.3, ~~is also considered concealment technology~~. or

(e) If mounted on a utility pole or tower, the equipment structure shall be of a similar color to that of the pole or tower to which it is attached, unless alternative measures are approved by the City as part of the applicable review process.

~~c~~9. Noise Standards - Equipment structures shall be oriented so that exhaust ports or outlets are pointed away from properties ~~which~~ that may be impacted by noise. The installation and operation of ~~E~~equipment structures shall comply with noise regulations in KZC 115.95. The City may require an assessment of noise after operation begins and remediation if the noise levels created are not within the prescribed limits. Cumulative noise impacts will be measured in cases where there is more than one equipment structure.

117.~~35~~ 80 ~~Landscaping/Buffering~~ Screening

1. General - Landscaping~~, as described herein,~~ shall be required to screen as much of the ~~new personal wireless service tower~~ PWSF and any ground-mounted features, including fencing, as possible, ~~the fence surrounding both the tower and any other ground level features (such as an equipment structure),~~ and in general soften the appearance of the site. The City may allow or require ~~any other form of~~ the use of concealment technology, as described in KZC 117.70.3, either instead of or in addition to required landscaping, ~~if it~~ to achieves ~~the same degree of~~ effective screening ~~as the required landscaping~~. The effectiveness of visual mitigation techniques ~~must~~ will be evaluated by the City, ~~in the City's discretion,~~ taking into consideration the site as built.

If the antenna is mounted on ~~an existing~~ a building, and the equipment structure is housed inside the building, landscaping shall not be required.

2. Existing Vegetation - Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance will result in less visual impact of the site on the surrounding area.

3. Buffering - Except for PWSF located in a public right-of-way and subject to review as a Planning Official decision, ~~B~~buffering of ground-mounted ~~personal wireless service facilities~~ PWSF shall be required around the perimeter of the facility. Landscape buffering shall ~~at a minimum~~ comply with the requirements of KZC ~~95.25(3)~~ 95.40.6.B, except that all trees must be evergreen; provided, that the City may approve or require optional buffering measures, if the City determines that such optional measures will provide effective screening. Such optional measures include, but are not limited to, the following:
   a. Walls or solid fencing, of a height at least as high as the equipment it screens, subject to KZC 117.80.4 below;
   b. Architectural features, such as parapets, mechanical penthouses, or building fin walls.
   c. Climbing vegetation supported by a structure such as a fence or trellis, of a type and size that will provide a dense visual barrier at least as high as the equipment it screens within two years from the time of planting; or
   d. The natural topography of the site or the adjoining property or right-of-way.

4. Fencing - Fencing may be allowed or required if it is needed for security purposes, or if it is part of concealment technology. The use of chain link, plastic, vinyl or wire fencing is prohibited unless it is fully screened from public view. Landscaping shall be installed on the outside of fences. Fencing installed specifically for the purpose of screening ground-mounted PWSF shall not be taller than necessary to provide appropriate screening.

5. Maintenance – The applicant shall maintain the screening in good condition and shall replace any plants required by this chapter or approved or required as part of the permit approval that are unhealthy or dead. In the event that ~~landscaping~~ screening is not maintained at the required level, the City, after giving 30 days' advance written notice to the provider, may maintain or establish the ~~landscaping~~ screening and bill both the landowner and provider for such costs until such costs are paid in full.

6. Nonwithstanding the above, the manner of screening for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

117.~~70~~ 85 ~~Modifications~~ Departures From Chapter Provisions

Provisions of this Chapter shall not be subject to variances described in Chapter 120 KZC. However, through Process IIB, Chapter 152 KZC, the City may consider ~~modification of standards in the~~ departures from Chapter provisions except for the following:

1. The 40-foot height limit for personal wireless service ~~facilities~~ towers in residential zones; and/or

2. The 15-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones.

~~2. A 20-foot minimum distance between a ground-mounted personal wireless service facility and any property line adjacent to or across the street from a residential use or residential zone.~~

117.~~40~~ 90 Non-Use/Abandonment

1. Bond - The City may require a bond or other suitable performance security ~~as per~~ pursuant to Chapter 175 KZC to cover the costs of removal of the antenna or tower.

~~2. Annual Report - The provider must confirm in writing to the City on an annual basis that the personal wireless service facility is still in use on a form to be provided by the City.~~

~~3~~ 2. In the event the use of any ~~tower or antenna~~ PWSF will be discontinued for a period of 60 consecutive days, the owner or operator shall so notify the City in writing, and the ~~tower or antenna~~ PWSF shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and affidavits from the ~~tower or antenna~~ PWSF owner or operator regarding the issue of ~~tower or antenna~~ PWSF usage. Upon such abandonment, the owner or operator of the ~~tower or antenna~~ PWSF or the owner of the property upon which such facility is located shall have an additional 60 days within which to:

a. Reactivate the use of the ~~tower or antenna~~ PWSF or transfer the ~~tower or antenna~~ PWSF to another owner or operator who makes actual use of the PWSF ~~tower or antenna~~; or

b. Dismantle and remove the ~~tower or antenna~~ PWSF. If such ~~tower or antenna~~ PWSF is not removed within said 60 days from the date of abandonment, the City may remove such ~~tower or antenna~~ PWSF at the facility owner's and property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

At the earlier of 60 days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval of the ~~tower or antenna~~ PWSF shall automatically expire.

117.95 Removal From City Property - When Required

A PWSF mounted to any City-owned property, utility pole, or other structure shall be removed if the City deems removal is necessary for the undergrounding of utilities, the sale, development, or redevelopment of City-owned property, or the demolition or alteration of a City-owned building or other structure. The PWSF shall be removed at no expense to the City.

117.~~75~~ 100 Appeals and Judicial Review

~~Appeals of administrative decisions shall be processed according to the appeal procedures for Process I; except, that any affected party may appeal and participate in the appeal; the time to appeal is taken from the date of administrative decision; and distribution of the appeal hearing notice by the Planning Official shall be to the applicant, appellant, the official newspaper of the City, and posted on public notice sign(s).~~

1. An applicant may appeal a Planning Official decision to the Hearing Examiner. A written notice of appeal shall be filed with the Planning Department within fourteen (14) days of the date the Planning Official's decision was mailed or otherwise delivered to the applicant. The office of the Hearing Examiner shall give notice of the hearing to the

applicant at least seventeen (17) days prior to the hearing. The applicant shall have the burden of proving that the Planning Official made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse, or modify the decision being appealed.

2. Appeals of Process I, IIA, or IIB permits are processed, and judicial review shall occur, according to the appeal and judicial review procedures and provisions for ~~either~~ Process I, IIA, or IIB respectively.

117.105 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity or other actions approved under this Chapter within one year after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 117.100, the running of the one year is tolled for any period of time during which a court order in said judicial review proceeding prohibits the development activity or other actions. The applicant must substantially complete construction for the development or other actions approved under this Chapter and complete the applicable conditions listed on the notice of decision within two years after the final approval on the matter, or the decision becomes void. For development activity or other actions with phased construction, lapse of approval may be extended when approved under this Chapter and made a condition of the notice of decision.

117.110 Complete Compliance Required

1. General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this Chapter in order to do everything authorized by that approval.

2. Exception – Subsequent or Minor Modification – The Planning Official may approve a modification to the permit approved for the PWSF if:

   a. The modification is minor and will not substantially change the proposed facility; and

   b. The proposed modification will comply with the provisions of this Chapter in effect at the time of the modification request; and

   c. There will not be any substantial changes in the impacts on the neighborhood or the City as a result of the change.

   Any modification, other than as specified in paragraph 2 of this Section, must be reviewed and decided upon as a new PWSF approval under this Chapter.

117.115 Time Limit

Any time limit, pursuant to Chapter 36.70B RCW, upon the City's processing and decision upon applications under this Chapter may, except as specifically otherwise stated in this Chapter, be modified by a written agreement between the applicant and Planning Director. In the event a permit constitutes or presents a special circumstance under the provisions of this Chapter, the time limits for the City to make a final decision and issue its notice of decision under Chapter 36.70B RCW are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

117.120 Compliance With Other City Codes

Compliance with the provisions of this Chapter does not constitute compliance, or remove from the applicant the obligation to comply, with other applicable provisions of this Code, the Comprehensive Plan, or any other ordinance or regulation of the City including, but not limited to, regulations governing construction or implementing the State Environmental Policy Act or the Shoreline Management Act.

117.~~80~~ 125 Conflict

Notwithstanding the requirements of Section 117.120 above, ~~To~~ to the extent that any provision or provisions of this Chapter are inconsistent or in conflict with any other provision of the Zoning Code, Comprehensive Plan or any ordinance or regulation of the City, the provisions of this Chapter shall be deemed to control. ~~Personal wireless service facilities~~ PWSF are permitted in the City pursuant to this Chapter notwithstanding the fact they are not mentioned in the use zone charts in Chapters 15 through 65 KZC.

117.~~60~~ 130 Violations and City Remedies

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Chapter 170 KZC, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this Chapter and all other remedies provided at law or in equity.

HOUGHTON COMMUNITY COUNCIL
Special Joint Meeting With Planning Director
January 10, 2006

**1. Call to Order and Roll Call 7:03 p.m.**

- Members Present: Chair Rick Whitney, Hugh Givens, Bill Goggins, Betsy Pringle, and Elsie Weber. Absent/Excused: David Hess, James Nickle

- City Staff present: Eric Shields, Nancy Cox, Jon Regala; Robin Jenkinson, City Attorney; Kathi Anderson, City Clerk; Lynn Stokesbary, Assistant City Manager; Lt. Hamilton, PD.

- Consultant Michael Bergstrom

**2. Oath of Office**

City Clerk Anderson administered the oath of office for each Councilmember.

**3. Election of Officers**

Chair announced election of officers. Ms. Pringle nominated Hugh Givens who declined; she nominated Rick Whitney as Chair. Nominations closed. Passed unanimously. Ms. Weber nominated Bill Goggins for Vice Chair. Nominations closed by acclamation. Passed unanimously.

**4. Reading and/or Approval of Minutes:**

a. November 28, 2005 – It was moved and seconded that Council dispense with reading of the minutes. Passed unanimously. Corrections were noted:
   - Page 3, top, make the following edit: In the case of a veto, the HCC is required to write Council a letter listing what revisions they require.
   - Page 3 at the end of the bulleted items, add: Houghton Community Council offered to provide a subcommittee to meet with members of the Kirkland City Council to resolve differences.

It was moved and seconded by that minutes are approved as revised. Passed unanimously.

**5. Announcement of Agenda**

Chair announced the agenda.

**6. Council Member Reports and Comments**

Ms. Weber mentioned that a neighborhood meeting was planned for the Yarrow Bay Marina office redevelopment on January 11.

**7. Work Program Review**

**8. Requests from the Audience**

- **Don Goodwin**, resident of Tent City 4, Temple B'nai Torah Bellevue – favors Staff regulations for legislation; has had a good relationship with the City of Kirkland.

- **Leo Rhodes**, resident of Tent City 4, Temple B'nai Torah Bellevue – the City of Kirkland has been very supportive and he thinks that the proposed legislation is great.
- **Tom Sherrard**, 558 20th Avenue, Kirkland – when Tent City 4 was at his Methodist Church, it was a very positive experience; wants Council to consider the ordinance as proposed.
- **Naomi Lombard**, 10917 NE 66th Pl, Kirkland – her church Kirkland Congregational hosted Tent City 4 and it was a very positive experience; she supports the 90-day limit of the encampment.

Ms. Cox interjected that copies of all e-mails received on this subject have been distributed to everyone present.

- **James Kimbrough**, 12224 NE 8th St, Bellevue – was the Tent City point person for his Woodinville church. He said that residents of Tent City take the Code of Conduct seriously; some residents of Tent City were asked to leave when the rules were broken.
- **Margaret Schwender**, 6556 116th Pl NE, Kirkland – supports helping the homeless and is active in this endeavor. She supports the 90-day stay limitation and the proposed ordinance.
- **Scott St Clair**, 11704 NE 148th Pl, Kirkland – submitted information (Exhibit I) about court documents that recount Tent City law violations; supports solutions to homelessness other than tent cities; wants more regulation of tent city activities.

There being no further testimony, Chair closed audience participation on the homeless issue.

**9. Special Joint Hearing with Planning Director 7:31 p.m.**
**A. Chapter 117 Kirkland Zoning Code – Personal Wireless Service Facilities (PWSF) Regulations – File No. IV-03-13**

Mr. Bergstrom gave a presentation as set forth in his December 27, 2005 memo to Eric Shields. The industry has had the last three weeks to review this information and raise questions that have not been brought to Staff as of yet. The memo shows a summary of other entities' regulations and also had attached photos of various PWSF. Mr. Bergstrom reviewed the 16 issues discussed in the memo. He said that the overriding concern is that the community's priorities be reflected in the ordinance.

Ms. Pringle wanted clarification that all of the required information would be obtained from future applicants. Mr. Bergstrom said it would. He also explained about the use of "cubic" and "square" feet. He said that this is a holdover from the existing Code that uses cubic feet in residential zones and square feet in non-residential zones and "it works".

On a question from Mr. Goggins, Mr. Bergstrom stated he will write a clarification of pole diameter restrictions. There was brief discussion on this issue. On Mr. Shields' question, Mr. Bergstrom clarified height limitations in residential zones. Mr. Shields spoke to the issue written as "modification of standards", that should read "exceptions to standards." Mr. Bergstrom will clarify that issue in the draft.

Council raised the question of protection in an area immediately adjacent to residential zone. Mr. Bergstrom stated that the review process requires notice to properties that touch within a 300' radius of the external property boundaries of the proposed construction site.

Mr. Shields observed that Council was beginning to get into discussion of the matter. The Chair called for public testimony.

- **Gary Abrahams**, 655 Crocket St, Unit B-107, Seattle feels staff and consultant has done a great job trying to make the Code better. He suggested some rewording for clarity. He wants the door left open for rooftop antennas.

As there were no further comments from the audience, Chair closed the hearing as to public comment.

Deliberations are continued to Council's regular meeting of January 23 to allow Mr. Bergstrom to take into consideration the input from the public.

Council discussion with Mr. Bergstrom ensued. View blockage and the increased pole diameter issue were discussed as to ADA accessibility and aesthetic value.

**10. Unfinished Business**

**A. Homeless Encampment Zoning Code Amendments to Chapter 127, File ZON05-00028**

Ms. Weber reported that she was contacted by three Kirkland residents who are in favor of the regulations for Tent City 4. The Chair observed that there was correspondence from these residents in the packet. Ms. Cox said she has received 29 e-mails that she distributed to Council members along with a matrix of information from other jurisdictions.

Ms. Pringle moved to recommend draft code amendments presented by Staff, seconded by Mr. Givens. Further discussion ensued.

There was discussion regarding the fact that only churches have hosted tent cities to date. Ms. Weber recommends putting a limit on how many tent cities are allowed in Kirkland at one time. Ms. Jenkinson said that there is no guidance in Washington State as to how a court would consider that kind of limitation. Council discussion continued. On request of the Planning Commission, Ms. Cox contacted Kirkland Interfaith Network and Hopelink regarding the ordinance; she has not had a response to date.

Mr. Goggins favors eliminating other community organizations as sponsors [other than churches] and limit encampments to 60 or 62 days as with any other temporary-use permit. Ms. Pringle favors 90 or 92 days duration every 12 months. The comment was made that the "safe" record for Tent City is a relatively short history. Lt. Hamilton answered questions as did Ms. Cox and Ms. Jenkinson.

There was a call for the question. The following amendment was proposed:

- **Eliminate community organizations other than churches as sponsors for Tent City encampments**

Council voted to amend the draft, with Ms. Weber opposing.

**MOTION: Recommend adoption of Staff's Draft code amendment on Homeless Encampments as amended: passed unanimously.**

**11. New Business 8:52 p.m.**
None.

**12. Administrative Reports and Community Council Discussion**
None

**13. Adjournment 8:52 p.m.**

_____
Rick Whitney, Chair

_____
Eric Shields, Planning Director
Department of Planning and Community Development

Recording Secretary: Marlene Eisele

# MEMORANDUM

**To:** Eric Shields, Planning Director
Houghton Community Council

**From:** Michael Bergstrom, Consultant

**Date:** December 27, 2005

**Subject:** Chapter 117 KZC – Personal Wireless Service Facilities Regulations, File No. IV-03-13

## I. RECOMMENDATION

Conduct a public hearing and make a recommendation to the City Council.

## II. BACKGROUND

On August 29, 2005 the Planning Director and Houghton Community Council conducted a public hearing on a draft ordinance that would replace the existing Chapter 117 KZC. Due to several questions raised by industry representatives about that draft, the public hearing was closed and Staff was asked to work through some of those issues and return for another hearing on a future date.

On September 19, Staff met with industry representatives to discuss their concerns. We have prepared a new draft, dated December 23, which will be the subject of a public hearing on January 10 (Attachment 1). On December 15, Staff sent a memo to the industry representatives summarizing the changes in the draft. Since the December 23 draft was still being refined at that time, they are receiving the actual draft at the same time as you.

## III. ISSUES

Following is a summary of the primary issues raised by the industry, plus one issue raised by the Community Council, and a description of how the December 23 draft responds to them:

1. *General Procedures: Permit review procedures should more closely reflect the City's locational priorities. Make it as easy as possible to locate PWSF in non-residential areas and within rights-of-way.*

   The draft has been revised to add clarity and specificity as to what facility type goes through what process. The table in 117.45 has been simplified, and shows a hierarchical review process reflecting the City's priorities. The table intends to prioritize co-location and use of existing support structures, particularly public or franchise structures (utility poles etc), and discourage new towers, particularly in residential zones.

2. *Prescriptive vs. Flexible Standards: Be specific and clear in our standards, while providing flexibility through some alternate process or performance standards. Be clear about what City will not allow.*

In addition to 117.45 (which addresses antennas and towers), 117.70, 117.75, and 117.80 provide standards for PWSF, Equipment Structures, and Screening. The concealment and screening of these sections all provide flexibility (117.70.3, 117.75.8, 117.80.3).

This draft reduces and simplifies the required setbacks for towers and equipment structures (see items #12 and 13 below), making further flexibility unnecessary in most cases. Additional flexibility can be achieved through Process IIB.

The only thing that the ordinance will expressly not allow is "cell-on-wheels" (117.30), except under narrow circumstances (117.25). The proposed concealment provisions make it clear that appropriate materials and other concealment techniques will be dependent on the context of the location, and therefore no particular form of concealment or design is prohibited.

3. *Co-Location: Ease the process for co-location in all areas. Co-location should only require Planning Official decision.*

   Co-location in nonresidential zones would be allowed as a Planning Official decision. Co-location in residential zones, where there is no height increase, would be allowed through Process I. Co-location in residential zones with height increase would be reviewed through Process IIB.

   In addition, attachment to water reservoirs, utility poles, or other support structures would be allowed in any zone as a Planning Official decision.

4. *Heirarchical Approach: Consider establishing permit requirements based on specific zones (or groups of zones), rather than just "residential" and "non-residential".*

   This approach doesn't work too well in Kirkland, given that the City has over 100 different zones. However, this new draft would allow attachment of antennas to non-residential buildings in residential zones (Process I), and to multi-family residential buildings in any zone (Process IIA). For many types of facilities, there has been an overall reduction in required process.

5. *Residential Zone Locations: Give preference (through standards, review process) to sites in residential zones used for non-residential purposes (schools etc).*

   See response to item #4.

6. *Antenna Types: Omni-directional antennae are passé. Almost every installation these days consists of panels. Code needs to reflect that fact.*

   As long as omni-direction antennas continue to exist, the code needs to address them.

7. *Panel Antenna Provisions: Panels should be allowed to be placed on rooftops, and to extend above rooflines when flush-mounted. A height of 10'-15' above the roofline is requested.*

   Staff is not proposing any change to the prohibition of panel antennas placed on, or extending above, a roof. However, it is noted that this is an issue with the industry, and can be discussed further at the public hearing. The industry representatives have been invited to provide photos of typical rooftop installations.

8. *Tower Heights: Allowable tower heights should be increased, at least in non-residential zones. 60'-70' is suggested.*

Similar to the previous (August) draft, the current draft proposes that towers greater than 40' in height be reviewed through Process IIA, and in non-residential zones only. Existing City code requires review through Process IIB, so this reflects some reduction in process.

As with rooftop antennas, it is noted that this is an issue with the industry, and can be discussed further at the public hearing.

9. *Industrial Zones:* *Installation procedures and requirements should be eased in industrial zones (and possibly others). Landscaping should not be required in industrial zones.*

   Kirkland's industrial areas are trending away from the typical "manufacturing" industrial areas, and more towards mixed-use areas. The City's industrial zones do not cover large geographic areas, and are therefore visible to surrounding non-industrial areas. The draft ordinance contains flexibility for landscaping (117.80.3). This Section has been revised to clarify that the City is not requiring buffering crossing property lines onto someone else's property (there seemed to be some confusion about this with the August draft).

10. *Replacement Pole Diameter:* *When utility (i.e., PSE) poles are replaced, allow them to be increased by 50% in diameter with no limit on diameter inches. Address PSE poles separately from other pole types. Could retain diameter inch limit on other pole types.*

    The increase in pole diameter has been raised from 16" to 18" through Planning Official decision in any zone (117.45), to correspond with the 50% limitation. Up to 100% or 24" could be proposed through Process I. A greater increase would require Process IIA review. PSE felt that these figures are workable.

    The definition of "utility pole" (117.15.16) has been revised to separate out structures that are not typically understood by the public to be utility poles. It now combines PSE poles with telephone poles etc. A new term "other support structure" (117.15.11) has been added to address what the industry might refer to as "free standing structure".

11. *Surrounding Opportunities Analysis:* *Reduce the ¼ mile requirement of 117.45 to a lesser radius, perhaps 300, 400, or 500 feet.*

    The new draft proposes no change to this requirement, except that is has been moved to 117.65. It is noted that this is an issue with the industry, and can be discussed further at the public hearing.

12. *Tower Setbacks:* *The 1:1 ratio between tower height and setback is unworkable and should be reduced.*

    The new draft no longer proposes the 1:1 ratio. Instead, it proposes a setback of 20' from any property line for towers up to 40', plus an additional one-half foot setback for each additional 1 foot of height (117.70.4).

13. *Equipment Structure Setbacks:* *Use standard setbacks of the underlying zone, rather than the 1:1 ratio. Waive setback requirements for equipment structures contained in a legally established building or portion of a building (e.g., garage).*

    These proposed setbacks have been revised. However, using the standard setbacks of the underlying zone was problematic since each zone allows a variety of uses and each use has its

own setback requirements. The new draft proposes a 0' setback for any equipment structure 30" or less in height, and a 10' setback if greater than 30" in height. Equipment structures contained in a legally established building would be exempt from these requirements (117.75.4).

14. *Equipment Structure Sizes: Increase maximum allowable size from 500 cf to 840 cf. Reduce allowable enclosure size from 500 sf to 120 sf. This more reflects the dimensions and typical siting of equipment cabinets.*

    The new draft makes these changes, except that the draft allows enclosure size of 125 sf, rather than the 120 suggested, to allow the occasional overage.

15. *Flexibility of Standards: Give City the authority to vary certain standards where such would produce lesser visual impact, e.g., in 117.70.4.a, add the phrase "unless otherwise determined by the City that such a setback creates a greater visual impact… "*

    This puts City staff in the awkward position of negotiating ordinance provisions without input from potentially affected parties. Staff believes that, between the flexibility built into this draft, provisions for modification, and proposed setback reductions, sufficient provisions exist to address most challenges that might arise, and appropriately uses more formal processes for the greater challenges.

16. *Appeals: Determine whether an appeal of a Planning Official decision should be available to just the applicant, or to "any affected party" (117.100) (note: this was an issue raised by a member of the public hearing body, not by an industry representative).*

    Based on input received after the August 29 hearing from the City Attorney, we are continuing to propose to limit the opportunity for appeal of Planning Official decisions to the applicant, and not broaden it to the general public. This approach is consistent with appeal provisions for other Planning Official decisions in the Zoning Code.

As can be seen from the above, there are some changes the industry would like to see that are not addressed by the December 23 draft. These issues raise policy questions, and include panel antennas mounted on rooftops, allowing increased tower height (at least in non-residential zones), and reduction of the required ¼ mile review radius for new towers or increases of tower height in residential zones. The Planning Director and Community Council can take input on these issues at the January 10 hearing and decide whether to change them. Staff does not propose any changes at this time.

## IV. DIFFERENCES BETWEEN DECEMBER 23 AND AUGUST 5 DRAFTS

The differences between the new draft and the August draft are listed below. Some of these are more fully described in Section III above:

117.15 – Definitions: Adds "Building" and "Other support structure". Modifies "Antenna height", "Equipment structure", "Existing structure", "Replacement structure", "Tower", and "Utility pole".

117.20 – Applicability: Revises provisions for "Existing Facilities" and "Other Wireless Communication Facilities", to include GPS, and to clarify what types of replacement, additional, or reconfigured facilities are allowed.

117.30 – Exemptions: Allows temporary PWSF during construction of a permitted PWSF.

117.40 – Co-Location Encouraged: Removes unnecessary language; revises language pertaining to "evidence".

117.45 – Application Review Process: Removes unnecessary language; revises structure and content of table. Adds attachment of antennas to non-residential buildings in residential zones (Process I) and multi-family buildings in any zone (Process IIA).

117.50 – Pre-Submittal Meeting: Removes ability of Planning Official to waive meeting.

117.60 – Determination of Application Completeness – Clarifies time frame for determining completeness.

117.65 – Third Party Review: Minor wording changes; includes reference to Process IIA. Incorporates ¼ mile radius review requirement that previously appeared in 117.45.

117.70 – PWSF Standards – Setbacks (Sub 4): Revises required setbacks for new towers (20' up to 40' in height, plus ½' setback for each additional 1' in height).

117.70 – PWSF Standards – Antennas On a Utility Pole (Sub 6): Addresses non-residential zones.

117.75 – Equipment Structure Standards – Maximum Size in Residential Zones (Sub 1): Changes allowable sizes.

117.75 – Equipment Structure Standards – Setbacks When Located on Private Property (Sub 4): Changes/simplifies required setbacks.

117.75 – Equipment Structure Standards – Equipment structures mounted on poles or towers (Sub 6): Adds reference to underlying utility owner.

117.80 – Screening/Buffering (Sub 3): Language clarified to avoid confusion about buffer locations.

117.95 – Removal From City Property – When Required: Adds "sale" of City-owned property as trigger for removal.

## V. ADDITIONAL INFORMATION

1. Photos. Several photos are attached to this memo. Some of these were provided by Puget Sound Energy and do not necessarily depict facilities in Kirkland. Others are provided by the City of Kirkland, and all facilities shown are located in the city. The photos depict a variety of antenna and equipment structure installations, including utility pole attachments, ground-mounted equipment structure enclosures, rooftop panels, antennas on water reservoir, and building-mounted panels. We have suggested to the industry representatives that they provide additional photos of typical rooftop installations of panel antennas, since that is an issue of particular concern to them.

2. Other Cities' Regulations. In the early stages of drafting this ordinance, Staff reviewed the ordinances of several other cities, including Bellevue, Burien, Edmonds, Leavenworth, and Pullman. Staff has again reviewed these ordinances for the preparation of the December 23 draft. As was the case before, it is difficult to draw very many direct comparisons between the different regulations, due to differences in code structure, terminology, and review processes. Still, the following highlights from each set of regulations may be helpful. These are general observations, by no means exhaustive nor expert, and will not cover every facility type:

a. Bellevue: "Wireless Communication Facilities" (WCF) are exempt from land use review if they meet certain criteria. They still must comply with code requirements, but are reviewed administratively. Those that don't meet the criteria are reviewed through a Conditional Use Permit process.

   In most residential zones (R-20 and R-30, both multifamily zones, being the exceptions) WCF are not allowed on any residential structure, or on an undeveloped site in a residential zone, or on any site developed with a residential use. In all residential zones, WCF are allowed on non-residential structures (schools, churches, etc) and in the right-of-way.

   To be exempt from land use review, WCF located in the right-of-way can add no height to a utility support structure in a residential zone, and no more than 21 feet in a non-residential zone. Outside of the right-of-way, WCF must be attached to an existing or replacement support structure, but the height cannot exceed the greater of the maximum allowable building height of the zone or the height of the structure to which it is attached or replaces. In no case can the WCF add more than 15 feet to the support structure.

   The foregoing are not the only criteria for land use review exemption, but they are the primary ones. If any of the criteria are not met, the WCF must be reviewed as a Conditional Use Permit. Under a CUP, the provider must show that the height requested is the "minimum height necessary".

   Bellevue establishes a hierarchy of preferred design: (1) Attached to public facility structures, building mounted, or integrated with utility support structures; (2) Co-located on utility poles, light standards, signal supports, existing WCF support structures or existing communication, broadcast and relay towers, and (3) freestanding WCF support structures.

b. Burien: No special review process is required for (1) co-location of antennas on an existing support structure in a non-residential zone, (2) attachment of antennas to existing structures in certain industrial and commercial zones, or (3) attachment of antennas to existing or replacement ball field light standards, electrical transmission towers, water tanks, or existing utility poles in any zones.

   A "Type 1" review is required to attach antennas to existing structures (but not single-family homes) in the O, SPA-1, SPA-2, SPA-3 ,DC, CI, RM, and RS zones. A "Type 2" review is required for any PWSF not meeting the above criteria.

   Burien prohibits the following: Lattice towers in all zones, new monopoles in the DC zone, and new monopoles in residential zones. Burien also requires that new support structures be designed to accommodate antennas for more than one use, to reduce the number of future support structures.

   Antennas are allowed on rooftops, but must be set back from the roof edge one foot for each foot of antenna height. Whip antennas may extend 15 feet above the highest point of the structure, panels may extend 10 feet.

   Monopoles are allowed to 100 feet in the CR and I zones; and to 60 feet in all other zones where monopoles are allowed (which does not include residential zones).

   A replacement utility pole may not be more than 15 feet taller than the pole it replaces. Panels may not project out more than 12 inches from the pole, and may not exceed six feet

in height. The top of the panel may not extend above the top of the pole. PWSF located on a utility pole must be separated by at least 1000 feet from any other PWSF located on a utility pole in a residential zone.

Equipment enclosures for PWSF located on utility poles in residential zones must be placed underground or in an existing building (but not in a residence).

c. Edmonds: This code uses the terminology of "micro facilities", "mini facilities", "macro facilities", "monopole I", "monopole II", and "lattice tower", and provides standards for each. The chapter that contains the regulations does not define these terms.

Micro facilities are permitted in all zones, but are subject to size and height limitations: Antennas equal to or less than 4 feet in height (except omni-directional antennas which can be 6 feet) and with an area not more than 580 square inches are exempt from the underlying height requirements of the zone. In an RS zone, a micro facility for a specific provider must be located at least 1,320 feet from other micro facilities of the same provider.

Mini facilities are permitted in all zones except RS, and may be located on buildings (except residential or residential-portions of buildings). Omni-directional antennas may exceed the height limit of the zone by 10 feet. Panels may exceed the height limit only if affixed to the side of an existing nonconforming building.

Macro facilities are permitted in all zones except RS, and may be located on buildings (except residential or residential-portions of buildings). Omni-directional antennas may exceed the height limit of the zone by 15 feet. Panels may exceed the height limit if affixed to the side of an existing building.

Monopole I facilities are only permitted in certain general commercial zones, business zones (BN, BC), and certain open space sites, subject to a Conditional Use Permit. For the most part, they are not permitted in residential zones (RS and RM), commercial waterfront, open space, or public zones. Maximum height is 60 feet, but antennas may extend up to 15 feet above the pole.

Monopole II facilities and lattice towers are permitted only in certain general commercial zones. They must be designed to accommodate two or more wireless communications facilities. A monopole II or lattice tower that exceeds 150 feet in height and is located within 300 feet of a residential zone or in certain public and open space sites require a Conditional Use Permit. Antenna can exceed the 150 foot height by an additional 15 feet.

d. Leavenworth: A Design Permit and a Conditional Use Permit is required for all Wireless Telecommunications Facilities (WTF) in the city; towers are prohibited throughout the city.

The attachment of antennas and accessory equipment structures are allowed in all zones; location within the light industrial district, and attachment onto existing structures used for utility functions, is preferred over other locations. Antennas can be located on or within new or existing buildings.

Only whip antennas can be attached to utility poles, and cannot exceed the height of the pole. No pole can be extended in height to accommodate an antenna.

Antenna height must be the minimum amount necessary to function satisfactorily, and shall not exceed one-third greater than the average height of the structure to which it is attached. Antennas and related equipment must conform with the setbacks of the underlying zone.

When mounted on buildings, panels must be flush-mounted and shall not extend above the wall or parapet unless required to achieve better compatibility with the building design or to obtain antenna function.

Roof-mounted dishes are allowed, subject to screening and locational standards (as close to center of the roof as possible).

e. Pullman: A "Wireless Communication Attached Facility" (a facility attached to an existing structure such as a building, tower, water tank), if less than or equal to 30 feet tall, is permitted in any zone. If more than 30 feet tall, it is a conditional use in residential zones (plus one commercial zone), and permitted in other commercial and all industrial zones.

A "Wireless Communication Freestanding Facility" (tower), if less than or equal to 80 feet tall, is a conditional use in all zones except the most intense commercial zone and all industrial zones, where it is permitted. If more than 80 feet tall, it is a conditional use in the afore-mentioned commercial and industrial zones, but prohibited in residential zones and less-intense commercial zones.

Freestanding facilities must be setback 15 feet from all property lines for towers up to 30 feet in height. Beyond that height, one additional foot of setback is required for each 5 feet additional to height (an 80 foot tower would have a 25 foot setback from each property line). Equipment structures must comply with the building setbacks of the underlying zone.

Antennas may be attached to buildings, except residential buildings.

Staff did not rely heavily on any of the above regulations in developing the proposed changes. Since most of the larger policy issues were debated prior to the adoption of the current regulations (general locational priorities, desirability and height of towers, rooftop attachment), the primary purpose of the current re-draft effort was to re-visit the existing regulations to see which could be removed and which need greater attention, restructure and reword sections of the chapter for the purposes of clarity, and more clearly address several issues that have required interpretation over the years. Because the fundamental framework of the existing Chapter 117 is workable, we were not seeking a different model to follow.

Copies of the above-referenced regulations can be made available to you upon request.

## VI. CONCLUSION

We believe that the enclosed draft successfully addresses the shortcomings of the current Chapter 117. It provides greater clarity throughout, adds provisions needed to make the chapter function properly (essentially Sections 117.95 – 110.120), resolves vagueries, and addresses the needs of both the community and the industry.

The enclosed draft is a "mark-up" draft, i.e., it contains strike-throughs of existing language to be deleted, and underlines of language to be added. If you would like to receive a "clean" copy of the draft ordinance, i.e., how it would appear without the strike-throughs and underlines, and/or if you would like to receive a "clean" copy of the existing Chapter 117, contact Mike Bergstrom by e-mail at bergstrommike@msn.com and it will be sent to you.

We look forward to discussing this draft further with you on January 10, 2006.

Attachments:

1. December 23, 2005 Draft Ordinance – Chapter 117 KZC
2. Photos

cc: Kristi Park, Pacific Telecom Services
Andrew Nenninger, T-Mobile
Gary Abrahams, T-Mobile
Norris Bacho, IGWT Inc.
Tim Gasser, Puget Sound Energy
Nancy Cox, PCD
Stacy Clauson, PCD
Jon Regala, PCD

**DRAFT 12/23/05**

# Chapter 117 - PERSONAL WIRELESS SERVICE FACILITIES

*NOTE: This view of the draft ordinance displays the proposed text changes between the existing Chapter 117 KZC and the proposed ordinance. Existing text that would be deleted is marked with a strike-through (~~this is an example~~) and new proposed wording is highlighted by an underline (this is an example), subject to further revision resulting from the public review process.*

Sections:


117.05 User Guide
117.10 Policy Statement
117.~~05~~ 15 Definitions
117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability
~~117.65 Other Wireless Communications Facilities~~
117.25 Exemptions
117.30 Prohibited Devices
117.~~55~~ 35 Permit Required~~ment~~
117.~~25~~ 40 Co-Location Encouraged
117.~~20~~ 45 ~~Priority of Locations~~ Application Review Process
117.50 Pre-Submittal Meeting
117.~~45~~ 55 Application Requirements
117.60 Determination of Application Completeness
117.~~50~~ 65 Third Party Review
117.~~30~~ 70 ~~Design~~ PWSF Standards
117.75 Equipment Structure Standards
117.~~35~~ 80 ~~Landscaping/Buffering~~ Screening
117.~~70~~ 85 Modification~~s~~ of Chapter Provisions
117.~~40~~ 90 Non-Use/Abandonment
117.95 Removal From City Property - When Required
117.~~75~~ 100 Appeals and Judicial Review
117.105 Lapse of Approval
117.110 Complete Compliance Required
117.115 Time Limit
117.120 Compliance With Other City Codes
117.~~80~~ 125 Conflict
117.~~60~~ 130 Violations and City Remedies


## 117.05 User Guide

This Chapter establishes the conditions under which Personal Wireless Service Facilities (PWSF) may locate and operate in different areas of the city. The provisions of this Chapter add to and in some cases supersede the other regulations of this code. If you wish to install, operate, or alter PWSF in Kirkland, you should read the provisions of this Chapter.

## 117.10 Policy Statement

~~The City has received requests to site towers and antennas.~~ The purpose of this Chapter is to provide specific regulations for the placement, construction, modification and removal of ~~personal wireless service facilities~~ PWSF. Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 332(c)(7), the provisions of this Chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent personal wireless services.

1. The goals of this Chapter are to:

~~(i)~~ a. ~~e~~Encourage the location of towers in nonresidential areas and to minimize the total number of tall towers throughout the City,

~~(ii)~~ b. ~~e~~Encourage the joint use of existing tower sites,

~~(iii)~~ c. ~~e~~Encourage users of towers and antennas to locate them, to the extent possible, in areas where the impact on the City is minimal,

~~(iv)~~ d. ~~e~~Encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas,

~~(v)~~ e. ~~s~~Strongly encourage the providers of personal wireless services to use concealment technology,

~~(vi)~~ f. ~~p~~Provide standards for the siting of ~~personal wireless service facilities~~ PWSF and other wireless communications facilities (such as television and AM/FM radio towers), and

~~(vii)~~g. ~~f~~Facilitate the ability of the providers of personal wireless services to provide such services throughout the City quickly, effectively and efficiently.

h. Prioritize the location of PWSF on existing structures such as ball field lights, transmission towers, utility poles or similar structures, particularly when located on public property.

2. Accordingly, the City Council finds that the promulgation of this Chapter is warranted and necessary to:

~~1~~ a. ~~To~~ ~~m~~Manage the location of towers and antennas in the City;

~~2~~ b. ~~To~~ pProtect residential areas and other land uses from potential adverse impacts of towers and antennas;

~~3~~ c. ~~To~~ ~~m~~Minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;

4 d. ~~To~~ ~~a~~Accommodate the growing need for towers and antennas;

~~5~~ e. ~~To~~ ~~p~~Promote and encourage shared use and co-location on existing towers as a desirable option rather than construction of additional single-use towers; and

~~6~~ f. ~~To~~ ~~a~~Avoid potential damage to adjacent properties through engineering and proper siting of ~~personal wireless service facilities~~ PWSF.

117.~~05~~ 15 Definitions

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below:

1. "Antenna" shall mean any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole,

light standard, building or other structure for the purpose of providing personal wireless services and its attendant base station. Types of antennas include:

a. An "omni-directional antenna" receives and transmits radio frequency signals in a 360-degree radial pattern. ~~For the purposes of this chapter, a~~

b. A "whip antenna" is an omni-directional antenna that is up to 15 feet in height and up to four inches in diameter.

~~b.~~ c. A "directional or panel antenna" receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.

2. "Antenna height" shall mean the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater. ~~Measurement of antenna height shall include the base pad, support structure, antenna, lightning rods, and other appurtenances.~~

3. "Building" shall mean a roofed structure used or intended for human occupancy.

~~3~~ 4. "Cell site" shall mean a tract or parcel of land or building that contains the ~~personal wireless service facilities~~ PWSF including any antenna, antenna support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

~~4~~ 5. "Co-location" shall mean the use or placement of PWSF ~~a common personal wireless service facility or~~ on a tower by two or more personal wireless service providers or by one personal wireless service provider for more than one type of communication technology.

~~5~~ 6. "Equipment structure" shall mean a facility, shelter, cabinet or vault used to house and protect ~~the~~ electronic or other associated equipment necessary for processing wireless communications signals. "Associated equipment" may include, for example, air conditioning, backup power supplies, and emergency generators.

~~6~~ 7. "Existing structure" shall mean, but is not limited to, any existing building, ~~electrical transmission tower, flagpole, light standard,~~ utility pole, water ~~tank~~ reservoir, other support structure, and structures accessory ~~structures~~ thereto.

~~7~~ 8. "FAA" shall mean the Federal Aviation Administration.

~~8~~ 9. "FCC" shall mean the Federal Communications Commission.

~~9~~ 10. "Nonresidential" or "nonresidential zone" shall mean (1) all portions of the City (including rights-of-way adjacent thereto, measured to the centerline of the right-of-way) in an area not zoned residential as defined in this Chapter, or (2) the I-405 or SR 520 right-of-way.

11. "Other support structure" shall mean a structure used to support PWSF or equipment structures, excluding buildings, utility poles, and water reservoirs. Examples of "other support structure" include flagpoles and ballfield light standards,

~~10~~ 12. "Personal wireless services" and "personal wireless service facilities" (PWSF), as used in this Chapter, shall be defined in the same manner as in Title 47, United States

Code, Chapter 5, Subchapter III, Part I, Section 332(c)(7)(C), as they may be amended now or in the future.

13. "Replacement structure" shall mean a structure that replaces or is intended to replace an existing structure of a similar design and similar primary purpose, to enable the installation of new or additional PWSF on that structure. If a "replacement structure" meets the definition of "tower", it shall be regulated as a new tower.

~~11~~ 14. "Residential" shall mean portions of the City in the following zones: RS 35; RSX 35; RS 12.5; RSX 12.5; RS 8.5; RSX 8.5; RS 7.2; RSX 7.2; RS 5.0; RSX 5.0; RM 5.0; RM 3.6; RM 2.4; RM 1.8; WD I; WD II; WD III; PLA 1; PLA 2; PLA 5A, D, E; PLA 6A, C, D, E, F, H, I, J, K; PLA 7A, B, C; PLA 9; PLA 15B; PLA 16; PLA 17; and P; and rights-of-way adjacent thereto, measured to the centerline of the right-of-way.

~~12~~ 15. "Tower" shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including any antenna support structure, self-supporting lattice towers or monopole towers. ~~, and does not include utility poles~~

16. "Utility pole" shall mean a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability

1. New ~~Facilities~~ Antennas and Towers – All new ~~personal wireless service facilities, including without limitation~~ antennas and towers~~,~~ shall comply with this Chapter unless the applicant had a vested application to site ~~a personal wireless service facility~~ said PWSF under a prior version of this ~~code~~ chapter, or unless specifically exempted by KZC 117.25.

2. Existing ~~Facilities~~ Antennas and Towers –
   a. All ~~personal wireless service facilities, including without limitation~~ existing antennas and towers~~,~~ shall be allowed to continue their usage as they ~~presently~~ exist as of the effective date of this ~~C~~chapter. Routine maintenance and reconfiguration of antennas shall be permitted on such existing antennas and towers, subject to the limitations below.
   b. ~~However, a~~Any reconfiguration pursuant to paragraph (a) above that increases the height or number of antennas ~~height~~ shall be treated ~~like~~ and processed as a new facility.
   c. Existing antennas that conform to the provisions of this chapter may be replaced by new antennas, if such new antennas are approved as a minor modification pursuant to KZC 117.110.
   d. The replacement of existing antennas that do not conform to the provisions of this chapter shall be treated and processed as a new facility.
   e. The replacement of an existing tower, whether that tower conforms or does not conform to the provisions of this chapter, shall be treated and processed as a new facility.

3. Equipment Structures –
   a. Existing equipment structures shall be allowed to continue their usage as they exist as of the effective date of this Chapter. Routine maintenance, reconfiguration of, or additions to equipment structures shall be permitted, subject to the limitations below.
   b. Existing equipment structures may be replaced, and new equipment structures may be added to an approved antenna and/or tower, provided that the new

equipment structures conform with the provisions of this chapter, and are approved as a minor modification pursuant to KZC 117.110

c. Reconfiguration or addition of equipment structures that increases the size of the equipment structure enclosure shall be treated and processed as a new facility.

d. Reconfiguration of or additions to a non-approved antenna or tower are not permitted, unless the entire facility obtains approval as a new facility through the appropriate review process.

4. ~~117.65~~ Other Wireless Communication Facilities - All of the provisions of this Chapter, which address personal wireless services and ~~personal wireless service facilities~~ PWSF, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television, satellite radio, global positioning systems (GPS), and AM/FM radio towers) to the maximum extent allowed by law.

117.25 Exemptions

The following are exempt from the provisions of this Chapter and shall be permitted in all zones, subject to any other applicable provisions of this Code:

1. Temporary PWSF during an emergency declared by the City.

2. Temporary PWSF located on the same site as, and during the construction of, a permanent PWSF for which appropriate permits have been granted.

3. Licensed amateur (ham) radio stations.

4. Satellite dish antennas less than two meters in diameter when located in non-residential zones, and satellite dish antennas less than one meter in diameter when located in residential zones, including direct to home satellite services, when used as an accessory use of the property.

117.30 Prohibited Devices

Except as exempted pursuant to KZC 117.25, PWSF that are not permanently affixed to a support structure and which are capable of being moved from location to location (e.g., “Cell on Wheels”) are prohibited.

117.~~55~~ 35 Permit ~~Requirement~~ Required

In all instances, a permit must be obtained from the City before any ~~personal wireless service facilities~~ PWSF may be constructed on any public or private land or right-of-way, including I-405, SR 520, and the Burlington Northern Railroad right-of-way, within the City limits.

117.~~25~~ 40 Co-Location Encouraged

To minimize potential adverse visual impacts associated with towers, co-location of antennas by more than one provider on personal wireless service towers shall take precedence over the construction of new personal wireless service towers. ~~Providers are encouraged, by the opportunity for expedited review as provided in this Chapter, to co-locate antennas onto personal wireless service towers.~~ Unless the applicant has shown by ~~substantial evidence that it has made a good faith effort to mount the antenna on an existing personal wireless service tower~~ evidence that the attempt was spatially, structurally, or technically infeasible, the City may deny the application to construct a new personal wireless service tower.

117.~~20~~ 45 ~~Priority of Locations~~ Application Review Process

~~1.~~ An application to site a ~~personal wireless service facility~~ PWSF shall be ~~subject~~ processed according to the ~~criteria contained in the~~ table below, after the applicant has satisfied the pre-submittal meeting requirements of KZC 117.50. ~~Only when the application does not meet a criteria shall the next group of criteria be considered. The hierarchy of criteria is divided into three separate approval processes: administrative decision, Process I permit and Process IIB permit. The order of criteria for locating personal wireless service facilities shall be as follows~~:

| Review Process | Facility Type [1] |
|---|---|
| 1. Planning Official Decision | a) Co-location of antennas on existing towers in nonresidential zones. |
| | b) Attachment of antennas to existing (but not replacement) buildings or mechanical equipment enclosures in a nonresidential zone. |
| | c) Attachment of antennas to existing water reservoirs, utility poles, or other support structures in any zone.[2] |
| | d) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed the diameter of the existing pole by more than 50% or 18 inches, whichever is less.[2] |
| 2. Process I Permit | a) Co-location of antennas on existing towers in residential zones, not resulting in any increase to tower height. |
| | b) New towers in nonresidential zones, not exceeding 40 feet in height. |
| | c) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed the diameter of the existing pole by more than 100% or 24 inches, whichever is less.[2] |
| | d) Attachment of antennas to non-residential buildings, such as schools or churches, in residential zones.[3] |
| 3. Process IIA Permit | a) New towers in nonresidential zones, exceeding 40 feet in height. |
| | b) Attachment of antennas to replacement buildings or mechanical equipment enclosures in non-residential zones. |
| | c) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will exceed the diameter of the existing pole by more than 100% or 24 inches, whichever is less. |
| | d) Attachment of antennas to multi-family residential buildings in any zone.[3] |
| 4. Process IIB Permit | a) Co-location of antennas on existing towers in residential zones resulting in an increase in tower height.[3] |
| | b) New towers in residential zones, not exceeding 40 feet in height.[3] |
| | c) Modification of standards contained in this Chapter, subject to the limitations of KZC 117.85. |
| | d) Any facility that does not qualify for review as a Planning Official decision, Process I permit, or Process IIA permit as listed above.[3] |

Footnotes:

1 Although this table specifically addresses antennas and towers, it is presumed that for each facility there will be associated equipment structures, and there may be structural alterations to existing support structures. Such equipment structures and structural alterations shall be reviewed through the same process as the facility with which they are associated, subject to the limitations of KZC 117.20.

2 Attachment of antennas to existing water reservoirs or other support structures, or to existing or replacement utility poles, where such attachment results in a height increase to the original support structure, may be approved only once through the review process indicated. Any

subsequent proposal that would result in a height increase shall be reviewed through Process IIB.

3 If in a residential zone, the applicant shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints or technological feasibility, no other location is available.

| | |
|---|---|
| ~~a. Administrative Decision~~ | ~~1) Co-location of antennas on personal wireless service towers in nonresidential zones.~~<br>~~2) Attachment of antennas to existing structures in nonresidential zones:~~<br>~~• Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>~~• Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>~~• All appurtenances and screening (including personal wireless service facilities) may not exceed 5% of the total roof area of a building and/or 5% of any façade of a building.~~<br>~~3) Equipment structures may not exceed 500 cubic feet with a 5-foot height limit in residential zones.~~<br>~~4) Antennas may be attached to ball field light standards, electrical transmission towers, water tanks or existing utility poles in residential zones. Whip antennas may exceed the structure height by a maximum of 15 feet and other antennas may exceed the structure height by a maximum of 10 feet.~~ |
| ~~b. Process I Permit~~ | ~~1) New personal wireless service towers and associated equipment in nonresidential zones:~~<br>~~• Located at least a distance equal to 100% of antenna height from any property line adjacent to or across the street from a residential use or residential zone;~~<br>~~• Antenna height is a maximum of 40 feet.~~<br>~~2) Attachment of antennas to existing structures in nonresidential zones:~~<br>~~• Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>~~• Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>~~• All appurtenances and screening (including personal wireless service facilities) may not exceed 10% of the total roof area of a building and/or 10% of any façade of a building.~~ |
| ~~c. Process IIB Permit~~ | ~~1) Any personal wireless service facility that is unable to meet the preceding priority of locational criteria for an administrative decision or Process I permit; see also KZC 117.70.~~ |

~~2. Further Process IIB Permit Requirements – An applicant for a new facility to be located in a residential zone shall demonstrate that a diligent effort has been made to located the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available. The personal wireless services provided is required to demonstrate that it contacted the landowners or owners of structures in excess of 30 feet within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site.~~

117.50 Pre-Submittal Meeting

Before an application requiring review through Planning Official Decision, Process I, Process IIA, or Process IIB will be accepted for processing, the applicant shall attend a pre-submittal meeting with the Planning Official, as required by KZC 145.12, 150.12, or 152.12.

117.~~45~~ 55 Application Requirements

a. ~~In the course of reviewing any request for any approval required under this Chapter made by an applicant to install personal wireless service facilities, t~~The City shall act within a reasonable period of time on a complete application submitted pursuant to this Chapter, taking into account the nature and scope of the request~~, after an application has been determined to be complete~~. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

b. All applications required pursuant to this Chapter ~~for administrative decision, Process I and Process IIB permits to locate a personal wireless service facility (including, but without limitation, an antenna or tower in the City)~~ shall be made using forms provided by ~~submitted to~~ the Planning Department and shall be accompanied by the information and support materials identified on said forms.~~with the applicable requested information (depending upon the type of facility which is involved). A detailed plan that complies with the submittal requirements of this Chapter, and other regulations and ordinances of the City, along with other pertinent information requested by the City shall also be submitted. An applicant's submission may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information depending upon the type of facility which is involved:~~

~~1. All applicants must register their request with the City on a form provided by the City at the time of building permit or right-of-way use permit application.~~

~~2. A scaled site plan clearly indicating the location, type and height of the proposed tower, antennas, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, the equipment structure, fencing, buffering and the type of concealment technology which will be utilized. The full, detailed site plan shall not be required if the antenna is to be mounted on an existing structure.~~

~~3. Photosimulations of the proposed facility from affected residential properties and public rights-of-way.~~

~~4. A current map and/or aerial photograph showing the location of the proposed tower.~~

~~5. Legal description of the parcel, if applicable.~~

~~6. Approximate distance between the proposed tower and antennas, as applicable, and the nearest residential unit, or residentially zoned properties.~~

~~7. Information of sufficient detail to demonstrate that the equipment structure is the minimum size necessary.~~

~~8. A landscape plan showing specific landscape, screening and fencing materials.~~

~~9. A notarized letter signed by the applicant stating that the personal wireless service facilities PWSF will comply with all applicable federal and state laws, including specifically FCC and FAA regulations, and all City codes.~~

~~10. A notarized letter signed by the applicant stating that the antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.~~

~~11. Manufacturers information indicating compliance with adopted noise standards.~~

~~12. The personal wireless services provider must demonstrate that it is licensed by the FCC, if required to be licensed under FCC regulations.~~

~~13. The applicant, if not the personal wireless services provider, shall submit proof of a lease agreement with an FCC-licensed personal wireless services provider if such provider is required to be licensed by the FCC.~~

~~14. Propagation maps shall be provided showing that the tower and antennas are required for present and future network coverage in order to satisfy the requirements of the provider's grid system. The maps shall also demonstrate that the height specified is the minimum height necessary for the tower and antennas, as applicable. The maps shall additionally show coverage areas at the requested height and at lower heights. Finally, they shall show the neighboring or regional facilities with which the facilities in the City can communicate.~~

~~15. If the site is within or adjacent to a residential zone, then a study shall be provided showing why alternative locations are not acceptable.~~

~~16. All providers shall submit satisfactory evidence that the facility is designed for and will provide services primarily for residents of the City and/or visitors within City limits.~~

~~17. See also KZC 117.40(2), Further Process IIB Permit Requirements, and KZC 117.55, Third Party Review.~~

117.60 Determination of Application Completeness

1. Planning Official Decisions: Within 28 calendar days after the date of submittal of the application, the Planning Official shall determine whether the application is complete. If the application is not complete, the Planning Official shall identify and communicate the needed components to the applicant. Once the application is complete, the Planning Official shall process the application.

2. Process I, Process IIA, and Process IIB Permits: The determination of completeness for Process I, Process IIA, and Process IIB permit applications shall occur pursuant to the process set forth in Chapters 145, 150, and 152 KZC, respectively.

117.~~50~~ 65 Third Party Review

In certain instances (~~including all~~ particularly Process IIA and IIB permit applications) there may be a need for expert review by a third party of the technical data submitted by the ~~personal wireless services provider~~ applicant. The City may require such a technical review, to be paid for by the applicant. ~~for the personal wireless service facilities~~. The selection of the third party expert shall be by mutual agreement between the applicant and the City, and such agreement not to be unreasonably withheld by either party. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering.

The expert review is intended to be a site-specific review of technical aspects of the personal wireless services, facilities, and other matters ~~as~~ described herein, and not a subjective review of the site selection. In particular, but without limitation, the expert shall be entitled to provide a recommendation on the height of the proposed facilities relative to the applicant's

coverage objectives and system design parameters. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions, and any specific technical issues outlined by the City or other interested parties.

To facilitate the expert review, an applicant for a Process IIB permit for a new tower in a residential zone, or for the co-location of antennas on existing towers in residential zones resulting in an increase in tower height, the applicant shall submit a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land and buildings and structures taller than 30 feet within ¼ mile of the proposed site. The applicant shall demonstrate that he/she contacted the landowners or owners of structures taller than 30 feet within a ¼ mile radius of the proposed site, and was denied permission by those owners to locate the facility on their land or their structures.

Based on the results of the third party review, the City may require changes to the application ~~for the personal wireless service facilities that~~ to comply with the recommendations of the expert.

117.~~30~~ 70 ~~Design~~ PWSF Standards

1. Context - The location and design of a cell site~~s in the City~~ shall consider ~~the~~ its visual and physical impact ~~of the site~~ on the surrounding neighborhood and shall, to the extent feasible, reflect the context within which it is located.

2. Design Compatibility - ~~Facilities~~ PWSF shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, ~~and~~ design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape to the maximum extent practical.

3. Concealment Technology. ~~- Concealment technology applies to all personal wireless service facilities, including, without limitation, antennas, towers and equipment structures. For any facility, "concealment technology" means the use of both existing and future technology through which a personal wireless service facility is designed to resemble an object which is already present in the local environment, such as a tree, streetlight, or traffic signal. It also includes:~~ Typical PWSF concealment measures are identified herein, and shall be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the PWSF:

   a. For personal wireless service towers:

      If within an existing stand of trees, ~~"concealment technology" means that~~ the tower ~~is to~~ shall be painted a dark color, ~~is~~ and be made of wood or metal.~~, and that a~~ A greenbelt easement is required to ensure permanent retention of the surrounding trees.

      ~~"Concealment technology" for~~ t Towers in a more open setting ~~means that they must~~ shall have a backdrop (for example, but not limited to, trees, a hillside, or a structure) on at least two sides, be a compatible color with the backdrop, be made of compatible materials with the backdrop, and ~~that~~ provide architectural or landscape screening ~~be provided~~ for the ~~other two~~ remaining sides. If existing trees are the backdrop, then a greenbelt easement is required to ensure permanent retention of the surrounding trees.

~~In all cases w~~Where a greenbelt easement is required, it shall be the minimum necessary to provide screening and may be removed at the landowner's request in the event the facility is removed.

Antennas shall be integrated into the design of any ~~personal wireless service~~ tower to which they are attached. External projections from the tower shall be limited to the greatest extent technically feasible.

b. For rooftop antennas or antennas mounted on other structures:

~~For o~~ Omni-directional antennas mounted on the roof ~~15 feet or less above the roof, "concealment technology" means use~~ shall be of a color compatible with the roof, structure or background.

~~For o~~ Other antennas~~, "concealment technology" means~~ shall use ~~of~~ compatible colors and architectural screening or other techniques approved by the City.

Antennas shall be integrated into the design of ~~any existing structure or support~~ the structure to which they are attached. External projections from the ~~existing structure or support~~ structure shall be limited to the greatest extent technically feasible.

c. ~~For a~~ Antennas mounted on one or more building facades~~: "Concealment technology" means~~ shall (a) use ~~of~~ color and materials ~~such that the facility has~~ to provide architectural compatibility with the building; ~~It shall~~ (b) be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible; and ~~shall~~ (c) not project above the wall on which it is mounted.

~~d. For equipment structures: "Concealment technology" means locating within a building, or if on top of a building, with architecturally compatible screening. An underground location, or locating above ground with a solid fence and landscaping, is also considered concealment technology.~~

d. Where feasible, cable and or conduit shall be routed through the inside of the support structure. Where this is not feasible, or where such routing would result in a support structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the support structure. The outside cable or conduit shall be the color of the support structure, and the City may require that the cable be placed in conduit.

e. Alternative measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process of that the optional measures will be at least as effective in concealing the PWSF as the measures required above.

f. Nonwithstanding the above, the manner of concealment for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

4. Setbacks - ~~Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ The following regulations apply, except for structures located in public right-of-way:

a. New towers shall be setback a minimum of 20 feet from any property line, plus an additional one-half foot for each foot of tower height above 40 feet.

b. Replacement structures intended to accommodate a PWSF shall be setback at least the same distance as the original structure from any property line adjacent to or across the street from a residential use or residential zone; and the lesser of ten (10) feet or the distance of the original structure from any property line adjacent to or across the street from all other uses or zones.

~~9~~ 5. Tower and Antenna Height - The applicant shall demonstrate that the tower and antenna are the minimum height required to function satisfactorily. Personal wireless service towers shall not exceed 40 feet in residential zones, as measured from the Average Building Elevation at the tower base to the highest point of the tower, antenna, or other physical feature attached to or supported by the tower.

6. Antennas On a Utility Pole - Antennas mounted to an existing or replacement utility pole may not project higher than 15' above the top of a pole not used to convey electrical service, or more than 15' above the electrical distribution or transmission conductor if the pole is used to convey electrical service; provided, that in nonresidential zones the antenna may project up to 21' above an electrical transmission conductor.

~~10~~ 7. Antennas On ~~or Above~~ a ~~Structure~~ Building, Mechanical Equipment Enclosure, or Water Reservoir - ~~Antennas and equipment structures on or above a structure shall be subject to the following criteria:~~

a. Antenna ~~and equipment structure~~ height is measured above the top of the roof, not from the parapet or from the Average Building Elevation of the building, mechanical equipment enclosure, or water reservoir.

b. Only omni-directional antennas may be roof-mounted, but may not be mounted on top of rooftop appurtenances. No panel or directional antennas may be mounted on roofs or project above the roofline. The "roofline" of a water reservoir that incorporates a curved roof shall be the point at which the vertical wall of the water reservoir ends and the curvature of the roof begins.

c. Whip antennas may exceed the structure height by 15 feet, and other omni-directional antennas may exceed the structure height by 10 feet.

~~c~~ d. ~~All r~~Roof-mounted antennas must be set back from the edge of the roof a distance equal to 100 percent of antenna height.

~~d. Roof-mounted antennas and equipment structures shall be incorporated into the pitched or stepped roof form, and not appear as a separate penthouse or box.~~

e. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered.

f. Antennas may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

g. ~~In no instance shall equipment structures, antenna and related equipment~~ Except for PWSF installed in an existing rooftop penthouse, PWSF shall occupy no more

than ~~25~~ 10 percent of the total roof area of a building. Rooftop conduit shall be excluded from this calculation.

h. Building parapets or other architectural features shall not be increased in size or height solely for the purpose of facilitating the attachment of PWSF components.

~~h~~. 8. Historic or Landmark Locations - No antennas shall be permitted on property designed as a historic resource or community landmark as identified in the Comprehensive Plan, unless such antennas have been approved in accordance with design requirements pertaining to historic structures.

~~i~~. 9. Signal Interference - No antennas shall cause localized interference with the transmission or reception of any other communications signals including, but not limited to, public safety signals, and television and radio broadcast signals.

~~j~~. 10. Support Wires - No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by the IBC. ~~UBC to anchor the antennas, antenna arrays or support structures.~~

~~5~~ 11. Views - ~~Personal wireless service facilities~~ PWSF, including towers, must be located and oriented in such a way as to minimize view blockage.

~~6~~ 12. Lights, Signals and Signs - No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.

~~7. Equipment Structures -~~ *(moved to 117.75, below).*

13. Noise – The installation and operation of PWSF shall comply with the noise standards set forth in KZC 115.95.

~~8~~ 14. Federal Requirements - All ~~towers and antennas~~ PWSF must meet ~~or exceed~~ current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, ~~then~~ the owners of the ~~towers and antennas governed by this Chapter~~ PWSF shall bring such ~~towers and antennas~~ PWSF into compliance with such ~~revised standards and regulations~~ changes in accordance with the compliance deadlines and requirements of such ~~standards and regulations~~ changes. Failure to bring towers and antennas into compliance ~~with such revised standards and regulations~~ shall constitute grounds for the removal of the tower or antenna at the owner's expense. ~~Additionally, I~~If, upon inspection, the City concludes that a ~~tower~~ PWSF fails to comply with such regulations and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the ~~tower~~ PWSF, the owner shall have 30 days to bring such ~~tower~~ PWSF into compliance with such standards and regulations. If the owner fails to bring such ~~tower~~ PWSF into compliance within said 30 days, the City may remove such ~~tower~~ PWSF at the owner's expense.

~~7~~ 117.75 Equipment Structures Standards ~~- The standards for equipment structures are as follows:~~

1. Maximum Size in Residential Zones - ~~e~~Equipment structures ~~may~~ shall not exceed ~~500~~ 840 cubic feet each and shall be no greater than 5 feet in height. ~~with a 5-foot height limit in residential zones.~~ Equipment structure enclosures shall not exceed 125 square feet each. These limitations shall apply to each individual equipment structure and enclosure, provided that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to these limitations.

~~b~~2. Maximum Size in Nonresidential Zones - Gross floor area of equipment structures shall be the minimum necessary but not greater than 240 square feet per provider. Maximum height is 10 feet above average building elevation. These limitations shall not apply to equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone.

3. Equipment Structures Located in Right-of-Way - If ground-mounted, said structures shall not exceed a height of 30 inches. If mounted on poles, said structures shall comply with 117.75.6. Setback requirements do not apply to equipment structures located in the right-of-way.

4. Setbacks When Located on Private Property – Ground-mounted ~~personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ equipment structures over 30 inches in height shall be setback at least 10 feet from all property lines; provided, that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to this requirement.

5. Equipment structures on or above a structure - Equipment structures on or above a structure shall be subject to the following criteria:

   a. ~~Antenna and e~~Equipment structure height is measured above the top of the roof, not the parapet.

   ~~d~~ b. When mounted to the roof of a building with a pitched or stepped roof form, R~~r~~oof-mounted ~~antennas and~~ equipment structures shall be incorporated into the ~~pitched or stepped~~ roof form, and not appear as a separate penthouse or box.

6. Equipment structures mounted on poles or towers -

   a. Equipment structures may be mounted on utility poles or towers. The location and vertical clearance of such structures shall be reviewed by the Public Works Department and verified by the underlying utility owner to ensure that the structures will not pose a hazard to other users of the right-of-way.

   b, Equipment structures mounted on utility poles or towers shall be located in a manner that minimizes clutter and visual impact.

~~a~~7. Compatibility - Equipment structures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.

8. Concealment - ~~For equipment structures: "Concealment technology" means~~ Typical concealment measures for equipment structures are identified herein, and shall be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment structure:

   (a) ~~l~~Locating within a building or building appendage constructed in accordance with all applicable City codes, ~~or if~~

   (b) Locating on top of a building, with architecturally compatible screening~~.~~ ,

(c) Locating ~~An~~ underground ~~location~~, ~~or~~

(d) ~~l~~Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.80.3, ~~is also considered concealment technology~~. or

(e) If mounted on a utility pole or tower, the equipment structure shall be of a similar color to that of the pole or tower to which it is attached, unless alternative measures are approved by the City as part of the applicable review process.

~~c~~9. Noise Standards - Equipment structures shall be oriented so that exhaust ports or outlets are pointed away from properties ~~which~~ that may be impacted by noise. The installation and operation of ~~E~~equipment structures shall comply with noise regulations in KZC 115.95. The City may require an assessment of noise after operation begins and remediation if the noise levels created are not within the prescribed limits. Cumulative noise impacts will be measured in cases where there is more than one equipment structure.

117.~~35~~ 80 ~~Landscaping/Buffering~~ Screening

1. General - Landscaping~~, as described herein,~~ shall be required to screen as much of the ~~new personal wireless service tower~~ PWSF and any ground-mounted features, including fencing, as possible, ~~the fence surrounding both the tower and any other ground level features (such as an equipment structure),~~ and in general soften the appearance of the site. The City may allow or require ~~any other form of~~ the use of concealment technology, as described in KZC 117.70.3, either instead of or in addition to required landscaping, ~~if it~~ to achieve~~s~~ ~~the same degree of~~ effective screening ~~as the required landscaping~~. The effectiveness of visual mitigation techniques ~~must~~ will be evaluated by the City, ~~in the City's discretion,~~ taking into consideration the site as built. If the antenna is mounted on ~~an existing~~ a building, and the equipment structure is housed inside the building, landscaping shall not be required.

2. Existing Vegetation - Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance will result in less visual impact of the site on the surrounding area.

3. Buffering - Except for PWSF located in a public right-of-way and subject to review as a Planning Official decision, ~~B~~buffering of ground-mounted ~~personal wireless service facilities~~ PWSF shall be required around the perimeter of the facility. Landscape buffering shall ~~at a minimum~~ comply with the requirements of KZC ~~95.25(3)~~ 95.40.6.B, except that all trees must be evergreen; provided, that the City may approve or require optional buffering measures, if the City determines that such optional measures will provide effective screening. Such optional measures include, but are not limited to, the following:
   a. Walls or solid fencing, of a height at least as high as the equipment it screens, subject to KZC 117.80.4 below;
   b. Architectural features, such as parapets, mechanical penthouses, or building fin walls.
   c. Climbing vegetation supported by a structure such as a fence or trellis, of a type and size that will provide a dense visual barrier at least as high as the equipment it screens within two years from the time of planting; or
   d. The natural topography of the site or the adjoining property or right-of-way.

4. Fencing - Fencing may be allowed or required if it is needed for security purposes, or if it is part of concealment technology. The use of chain link, plastic, vinyl or wire fencing is prohibited unless it is fully screened from public view. Landscaping shall be installed

on the outside of fences. Fencing installed specifically for the purpose of screening ground-mounted PWSF shall not be taller than necessary to provide appropriate screening.

5. Maintenance – The applicant shall maintain the screening in good condition and shall replace any plants required by this chapter or approved or required as part of the permit approval that are unhealthy or dead. In the event that ~~landscaping~~ screening is not maintained at the required level, the City, after giving 30 days' advance written notice to the provider, may maintain or establish the ~~landscaping~~ screening and bill both the landowner and provider for such costs until such costs are paid in full.

6. Nonwithstanding the above, the manner of screening for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

117.~~70~~ 85 Modifications of Chapter Provisions

Provisions of this Chapter shall not be subject to variances described in Chapter 120 KZC. However, through Process IIB, Chapter 152 KZC, the City may consider modification of ~~standards in the~~ Chapter provisions except for the following:

1. The 40-foot height limit for personal wireless service ~~facilities~~ towers in residential zones; and/or

2. The 15-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones.

~~2. A 20-foot minimum distance between a ground-mounted personal wireless service facility and any property line adjacent to or across the street from a residential use or residential zone.~~

117.~~40~~ 90 Non-Use/Abandonment

1. Bond - The City may require a bond or other suitable performance security ~~as per~~ pursuant to Chapter 175 KZC to cover the costs of removal of the antenna or tower.

~~2. Annual Report - The provider must confirm in writing to the City on an annual basis that the personal wireless service facility is still in use on a form to be provided by the City.~~

~~3~~ 2. In the event the use of any ~~tower or antenna~~ PWSF will be discontinued for a period of 60 consecutive days, the owner or operator shall so notify the City in writing, and the ~~tower or antenna~~ PWSF shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and affidavits from the ~~tower or antenna~~ PWSF owner or operator regarding the issue of ~~tower or antenna~~ PWSF usage. Upon such abandonment, the owner or operator of the ~~tower or antenna~~ PWSF or the owner of the property upon which such facility is located shall have an additional 60 days within which to:

a. Reactivate the use of the ~~tower or antenna~~ PWSF or transfer the ~~tower or antenna~~ PWSF to another owner or operator who makes actual use of the PWSF ~~tower or antenna~~; or

b. Dismantle and remove the ~~tower or antenna~~ PWSF. If such ~~tower or antenna~~ PWSF is not removed within said 60 days from the date of abandonment, the City may remove such ~~tower or antenna~~ PWSF at the facility owner's and

property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

At the earlier of 60 days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval of the ~~tower or antenna~~ PWSF shall automatically expire.

117.95 Removal From City Property - When Required

A PWSF mounted to any City-owned property, utility pole, or other structure shall be removed if the City deems removal is necessary for the undergrounding of utilities, the sale, development, or redevelopment of City-owned property, or the demolition or alteration of a City-owned building or other structure. The PWSF shall be removed at no expense to the City.

117.~~75~~ 100 Appeals and Judicial Review

~~Appeals of administrative decisions shall be processed according to the appeal procedures for Process I; except, that any affected party may appeal and participate in the appeal; the time to appeal is taken from the date of administrative decision; and distribution of the appeal hearing notice by the Planning Official shall be to the applicant, appellant, the official newspaper of the City, and posted on public notice sign(s).~~

1. An applicant may appeal a Planning Official decision to the Hearing Examiner. A written notice of appeal shall be filed with the Planning Department within fourteen (14) days of the date the Planning Official's decision was mailed or otherwise delivered to the applicant. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least seventeen (17) days prior to the hearing. The applicant shall have the burden of proving that the Planning Official made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse, or modify the decision being appealed.

2. Appeals of Process I, IIA, or IIB permits are processed, and judicial review shall occur, according to the appeal and judicial review procedures and provisions for ~~either~~ Process I, IIA, or IIB respectively.

117.105 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity or other actions approved under this Chapter within one year after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 117.100, the running of the one year is tolled for any period of time during which a court order in said judicial review proceeding prohibits the development activity or other actions. The applicant must substantially complete construction for the development or other actions approved under this Chapter and complete the applicable conditions listed on the notice of decision within two years after the final approval on the matter, or the decision becomes void. For development activity or other actions with phased construction, lapse of approval may be extended when approved under this Chapter and made a condition of the notice of decision.

117.110 Complete Compliance Required

1. General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this Chapter in order to do everything authorized by that approval.

2. Exception – Subsequent or Minor Modification – The Planning Official may approve a modification to the permit approved for the PWSF if:

a. The modification is minor and will not substantially change the proposed facility; and

b. The proposed modification will comply with the provisions of this Chapter in effect at the time of the modification request; and

c. There will not be any substantial changes in the impacts on the neighborhood or the City as a result of the change.

Any modification, other than as specified in paragraph 2 of this Section, must be reviewed and decided upon as a new PWSF approval under this Chapter.

117.115 Time Limit

Any time limit, pursuant to Chapter 36.70B RCW, upon the City's processing and decision upon applications under this Chapter may, except as specifically otherwise stated in this Chapter, be modified by a written agreement between the applicant and Planning Director. In the event a permit constitutes or presents a special circumstance under the provisions of this Chapter, the time limits for the City to make a final decision and issue its notice of decision under Chapter 36.70B RCW are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

117.120 Compliance With Other City Codes

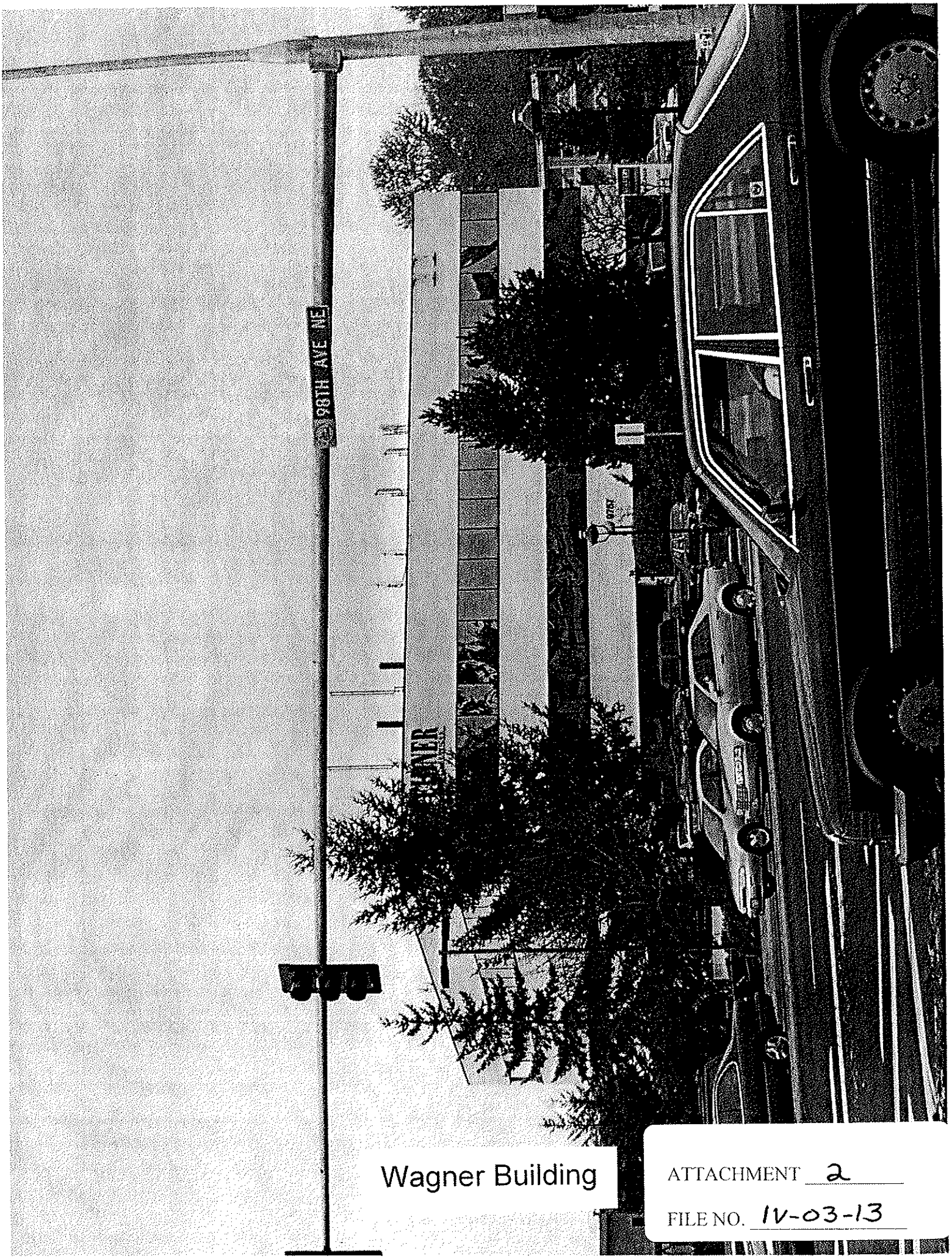
Compliance with the provisions of this Chapter does not constitute compliance, or remove from the applicant the obligation to comply, with other applicable provisions of this Code, the Comprehensive Plan, or any other ordinance or regulation of the City including, but not limited to, regulations governing construction or implementing the State Environmental Policy Act or the Shoreline Management Act.

117.~~80~~ 125 Conflict

Notwithstanding the requirements of Section 117.120 above, ~~To~~ to the extent that any provision or provisions of this Chapter are inconsistent or in conflict with any other provision of the Zoning Code, Comprehensive Plan or any ordinance or regulation of the City, the provisions of this Chapter shall be deemed to control. ~~Personal wireless service facilities~~ PWSF are permitted in the City pursuant to this Chapter notwithstanding the fact they are not mentioned in the use zone charts in Chapters 15 through 65 KZC.

117.~~60~~ 130 Violations and City Remedies

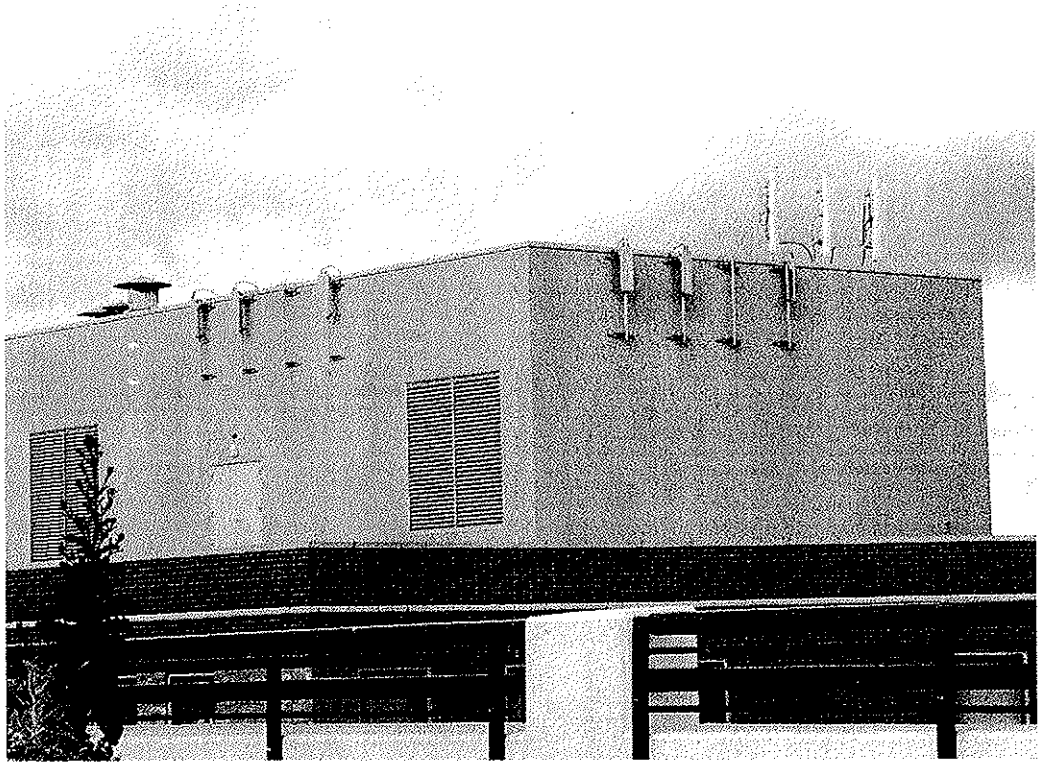
Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Chapter 170 KZC, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this Chapter and all other remedies provided at law or in equity.




Wagner Building

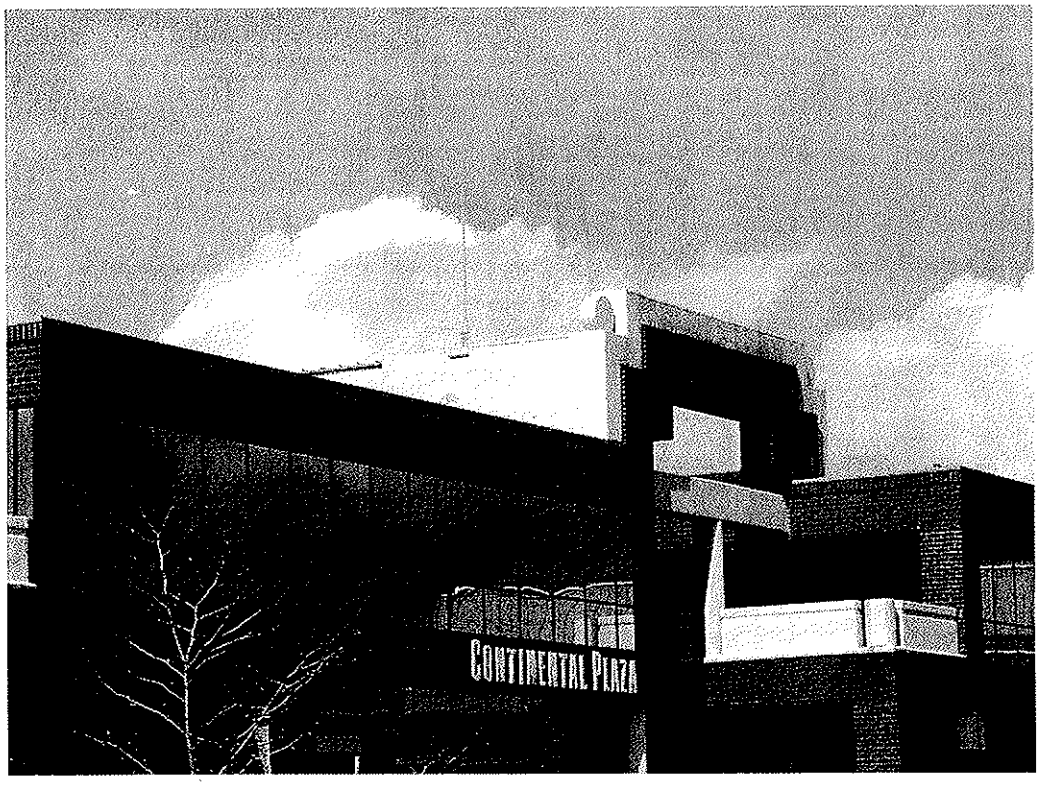
ATTACHMENT 2

FILE NO. IV-03-13



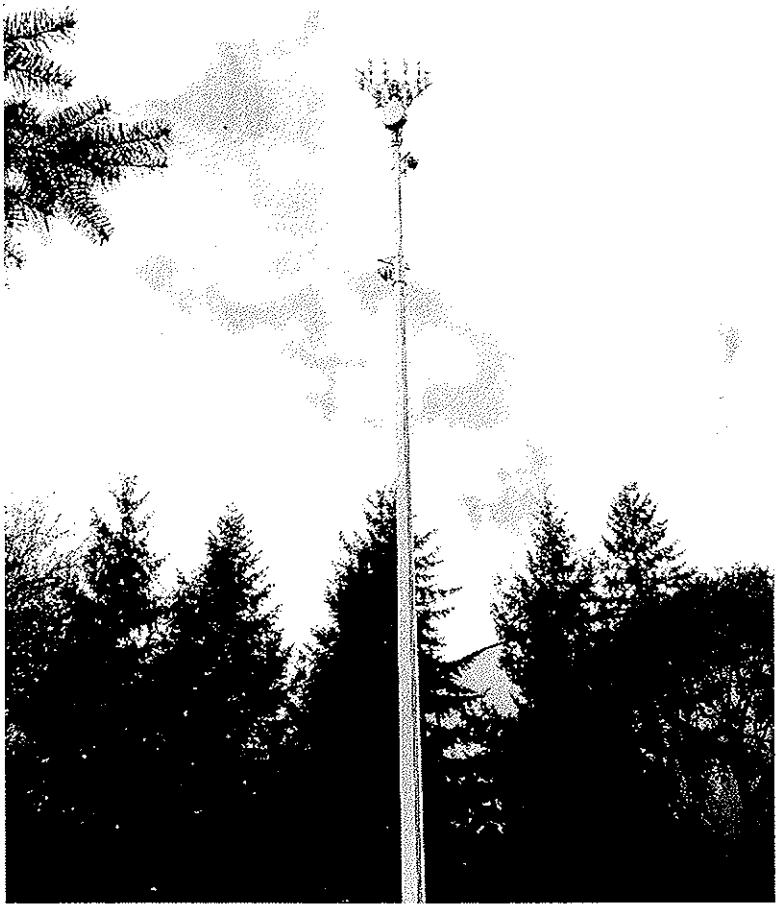
EvergreenHospital1

CarillonPt

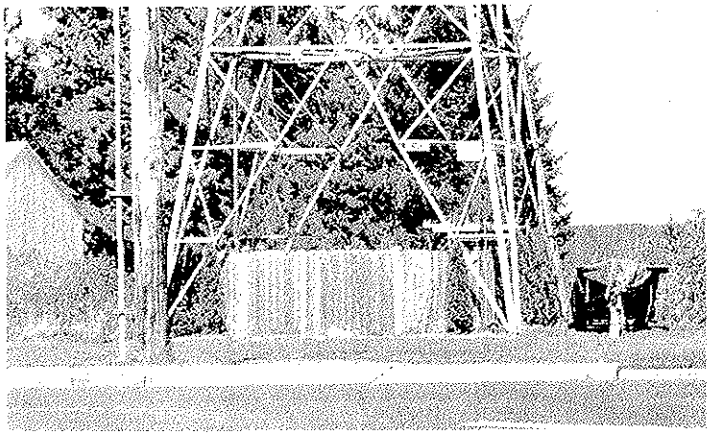



ParkPlaceRooftop1

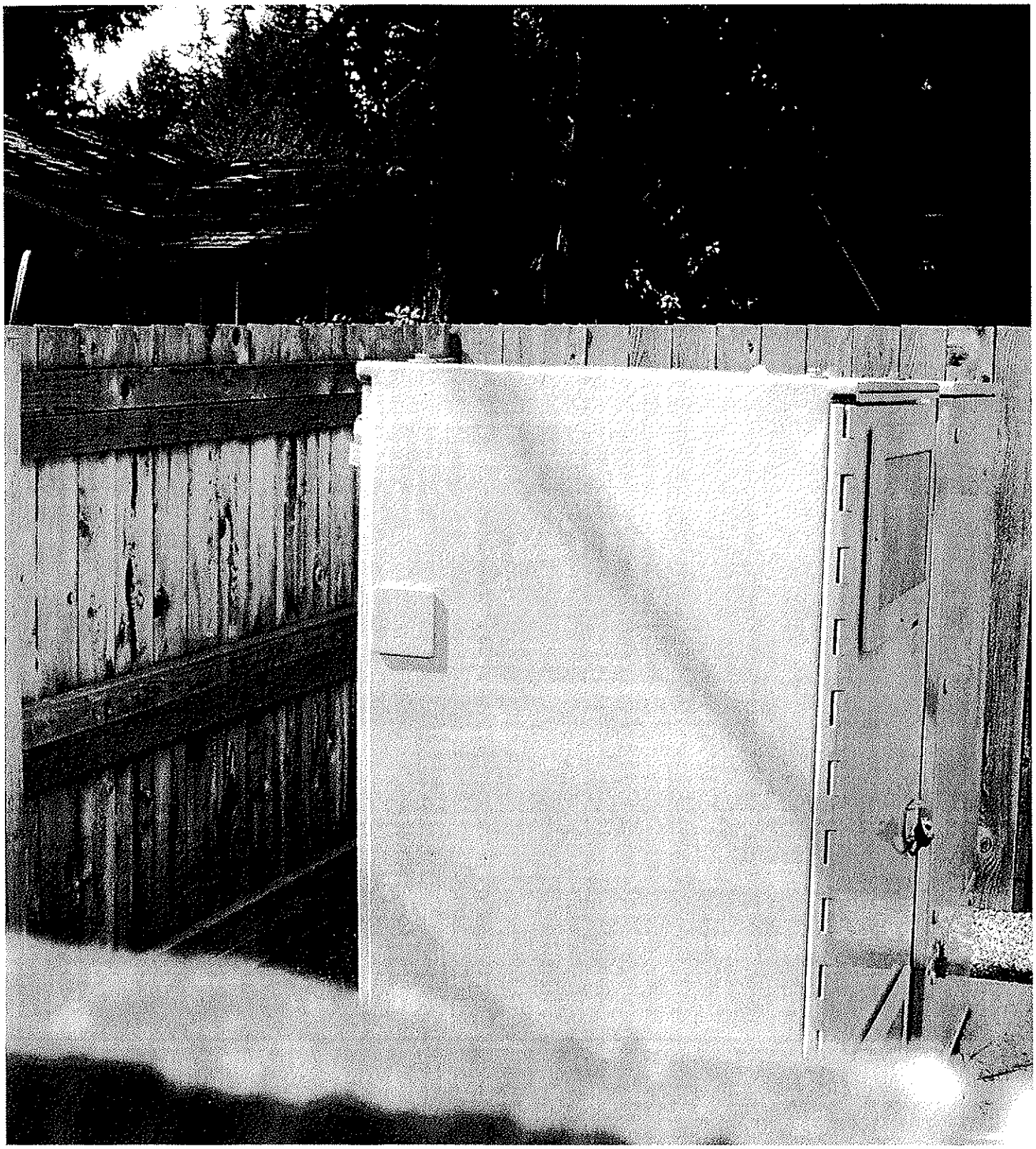
NorthReservoirTop



MarkTwainTower

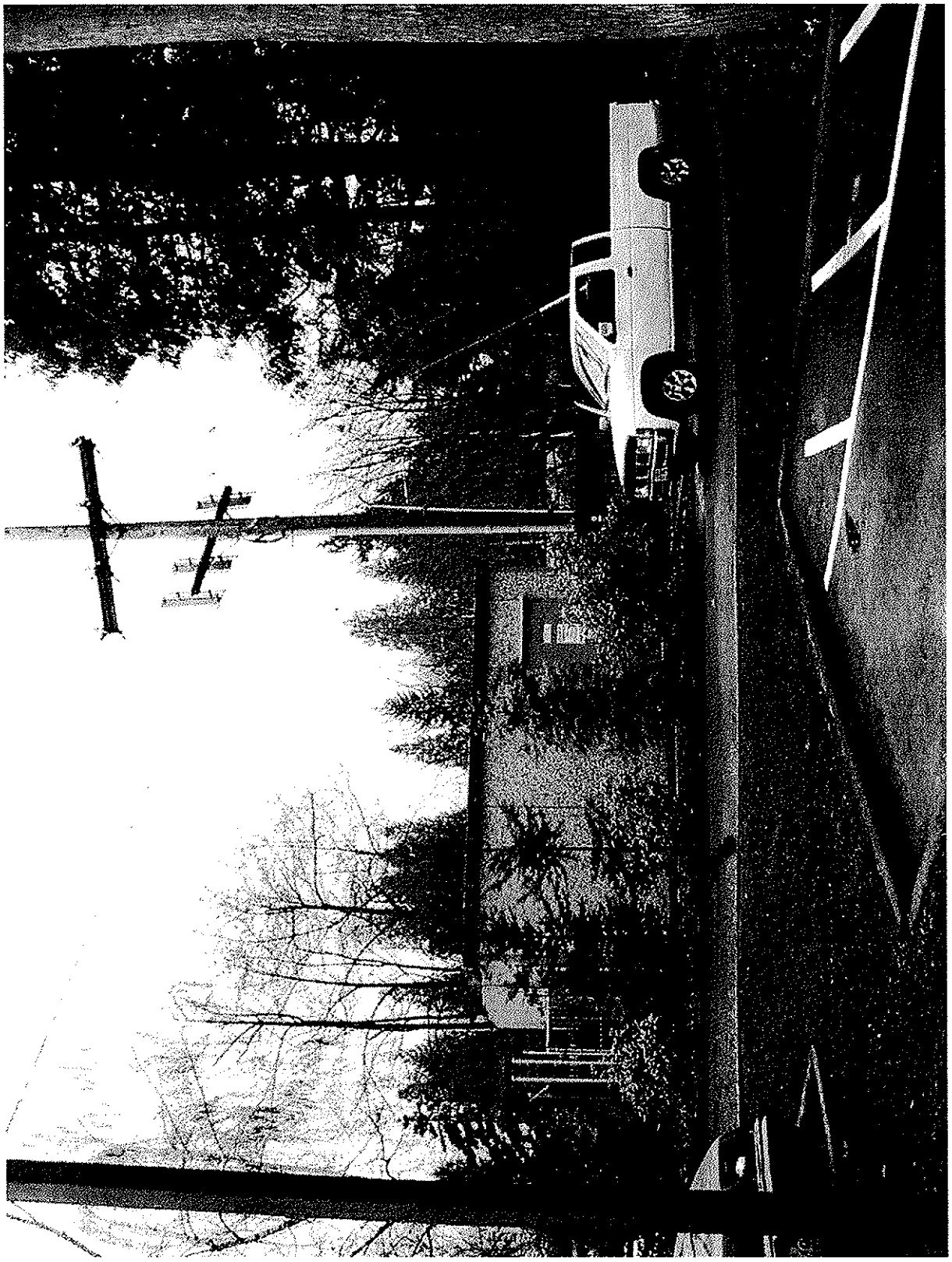


PSEcorridorNE80thBase

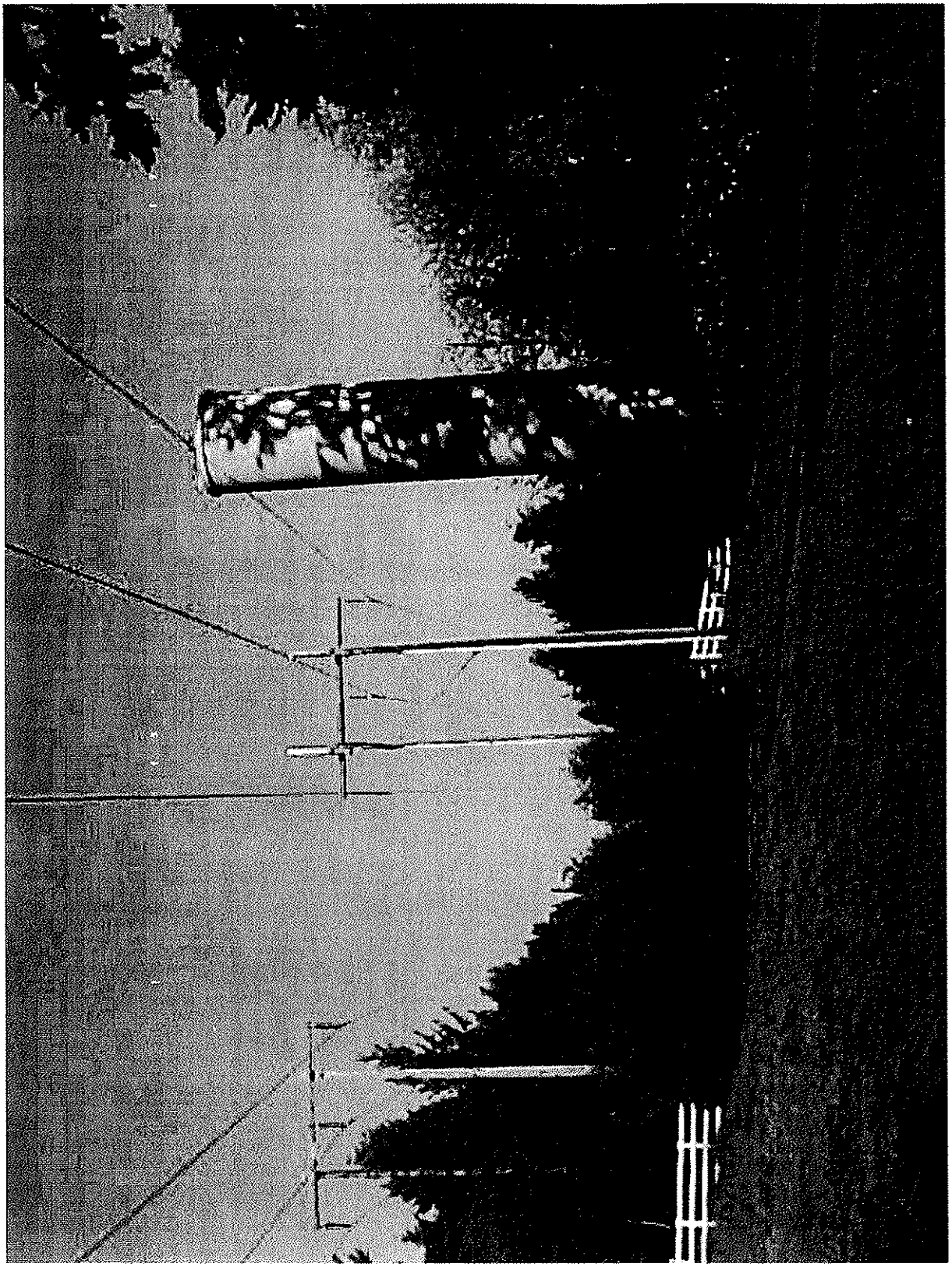


PSEne60thBase

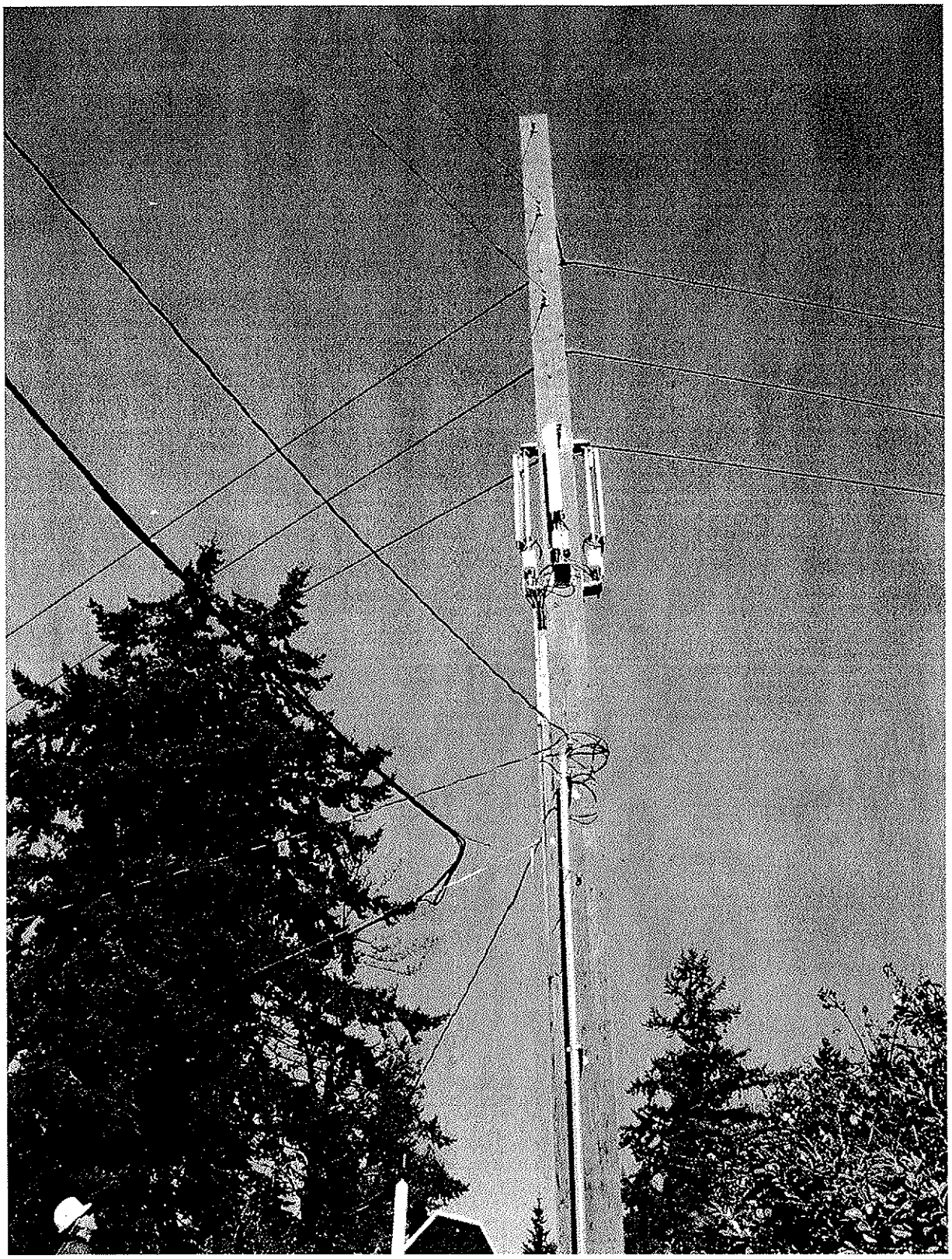
ATT Juanita North
Provided by PSE



Verizon I-405 / SR 520
Provided by PSE



Cingular Overlake
Provided by PSE



VS Meydenbauer
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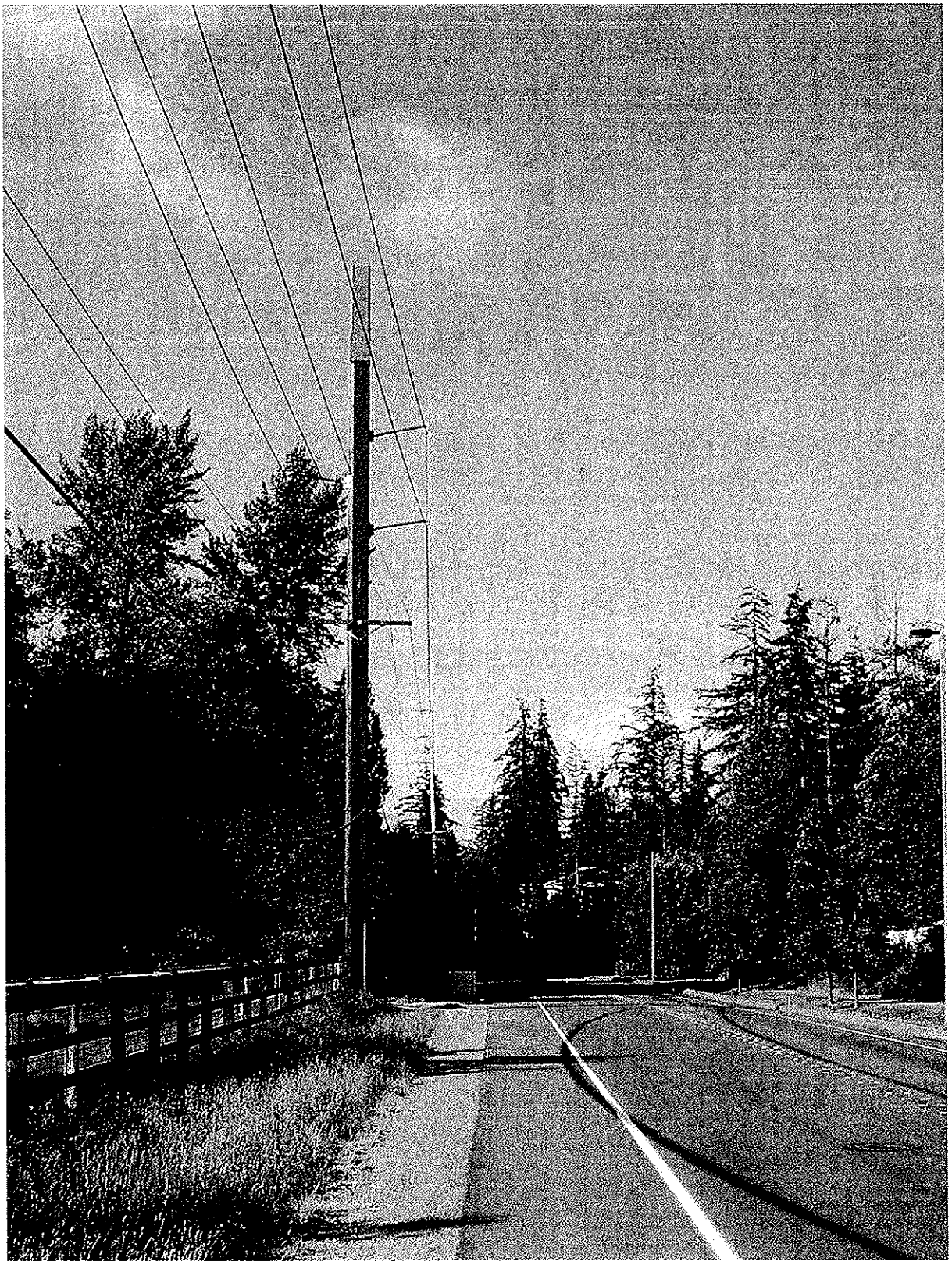

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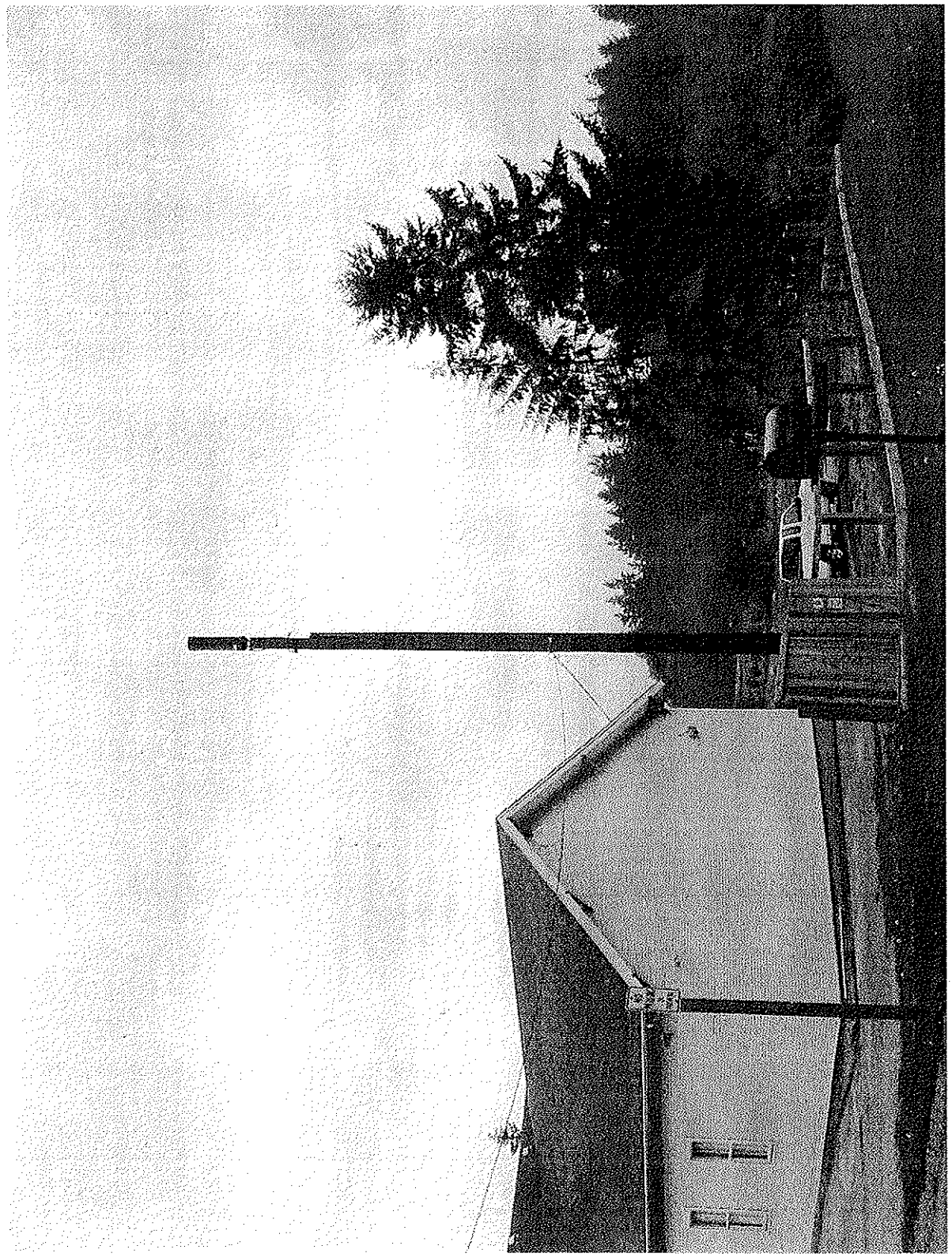
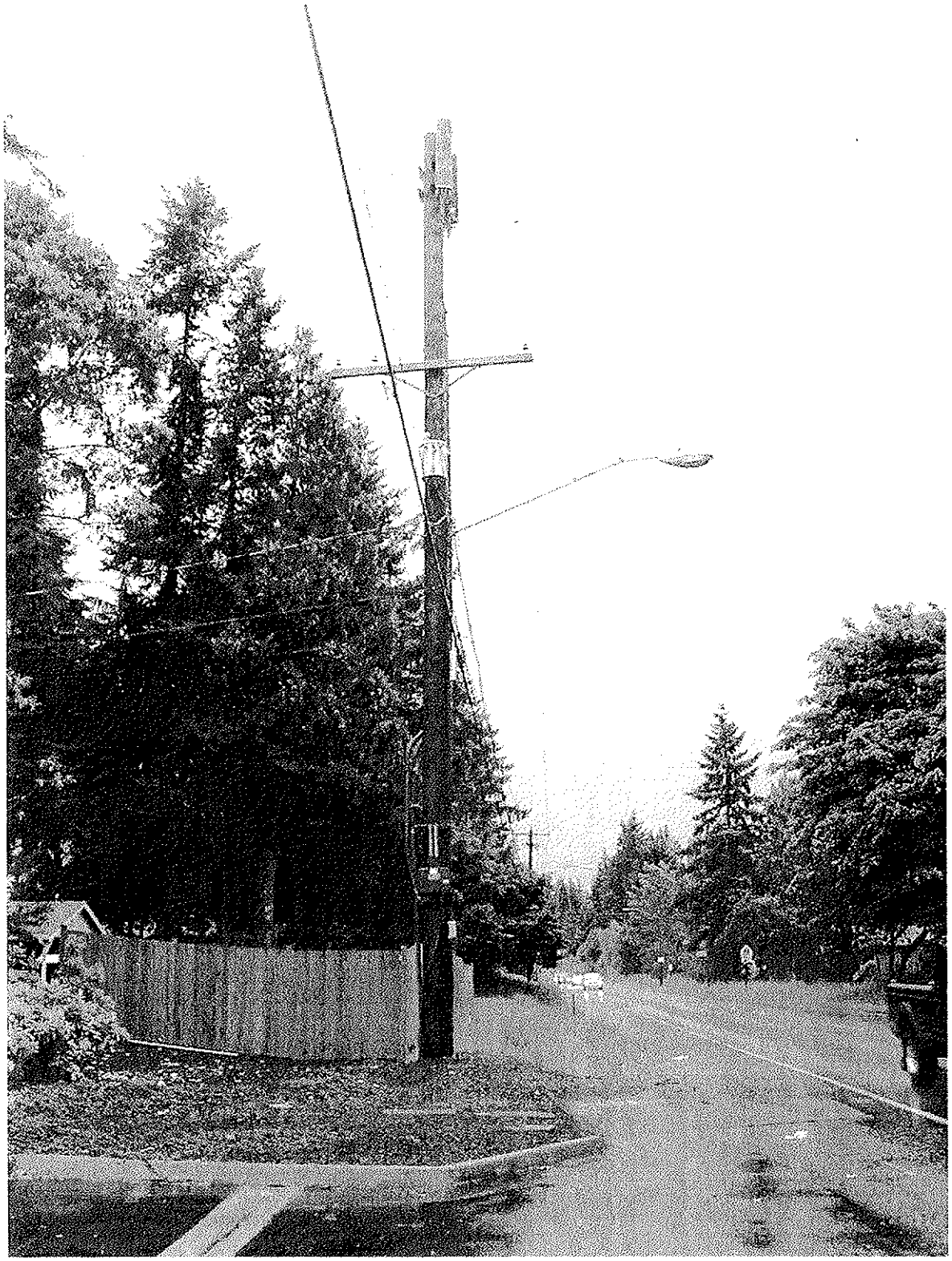
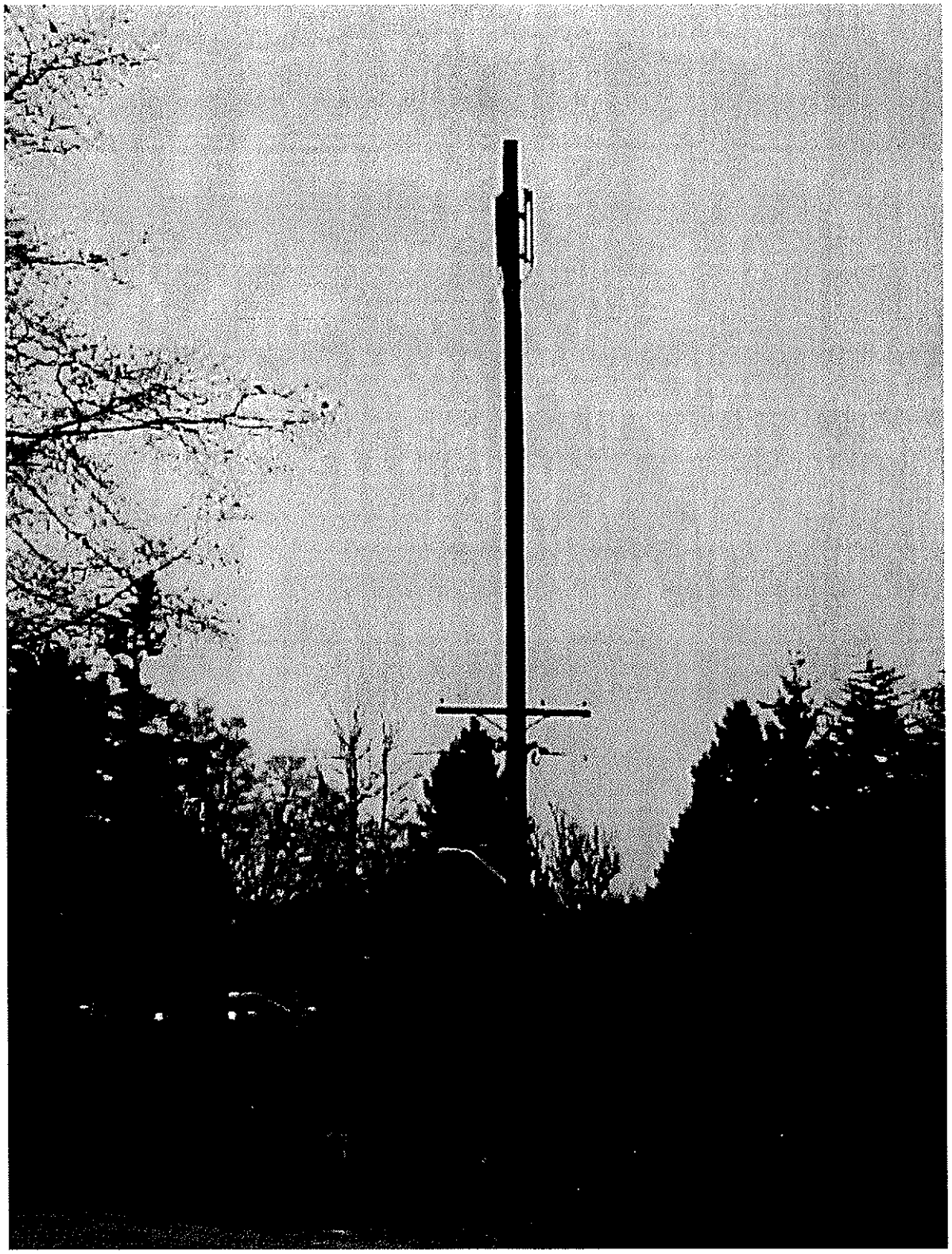


Redmond Grange
Provided by PSE

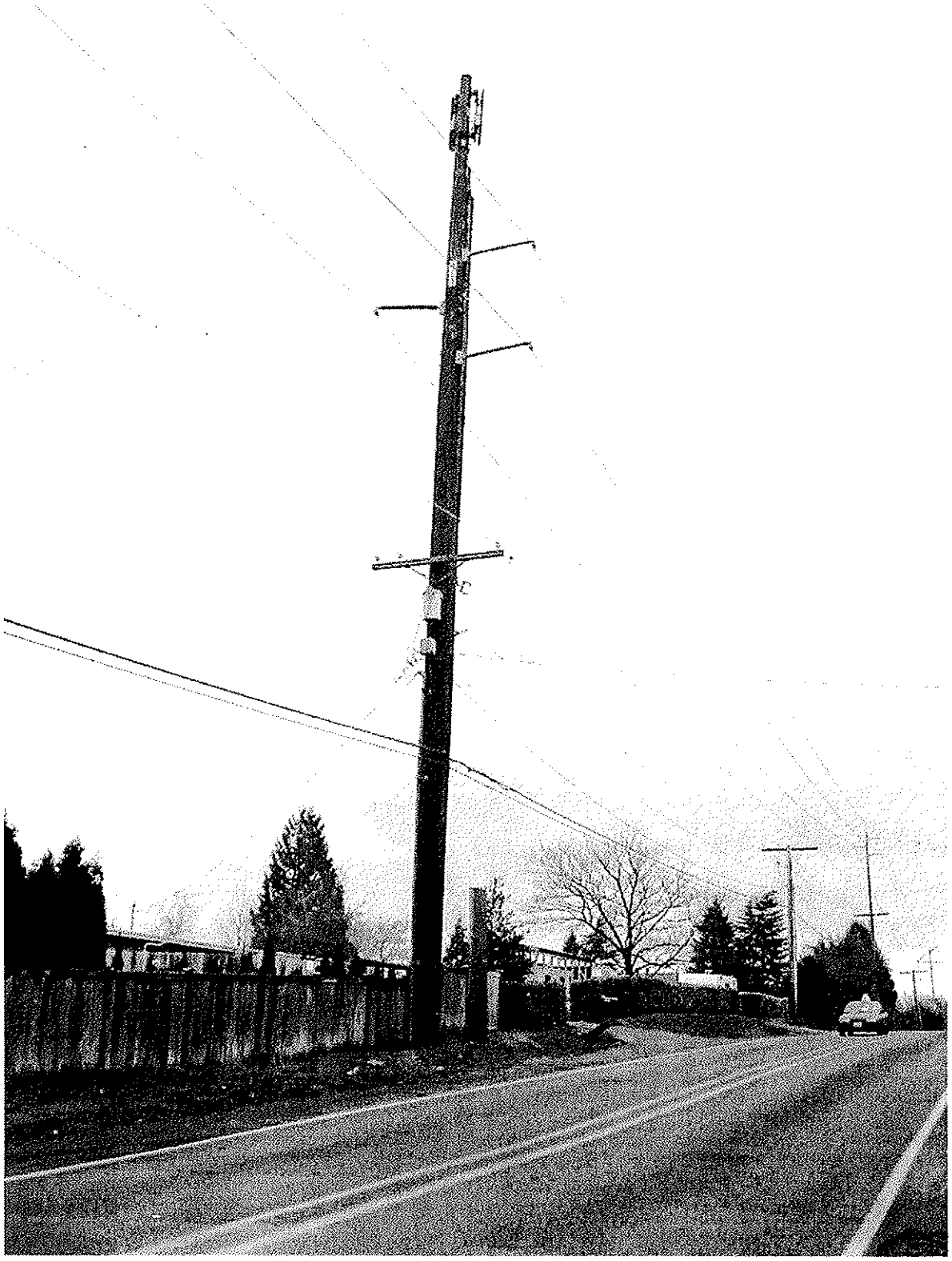


ATT Adelaide
Provided by PSE

ATT Hillaire
Provided by PSE



ATT Vashon
Provided by PSE



Cingular McMillan II
Provided by PSE

# MINUTES OF HOUGHTON COMMUNITY COUNCIL/SPECIAL JOINT MEETING WITH PLANNING DIRECTOR – AUGUST 29, 2005

## CALL TO ORDER/ROLL CALL

The meeting was called to order at 7:06 p.m. by Chair Hugh Givens. Members present: Bill Goggins, David Hess, James Nickle, Betsy Pringle, and Rick Whitney. Member absent: Elsie Weber. Eric Shields, Nancy Cox, Stacy Clauson and Michael Bergstrom represented the Department of Planning and Community Development.

**READING AND/OR APPROVAL OF MINUTES:** None

## ANNOUNCEMENT OF AGENDA

## COUNCIL MEMBER REPORTS AND COMMENTS

Mr. Hess invited everyone to come to the Houghdown on Monday, September 5, 11 AM.

## REQUESTS FROM THE AUDIENCE

## HEARINGS

### a. Wireless Code Amendments, File No. IV-03-13

Mr. Bergstrom presented the staff report dated August 19, 2005. He passed out additions to the staff report, which were Exhibit 1 - a letter dated August 24, 2005 from Pacific Telecom Services, LLC; Exhibit 2 – Draft Ordinance, Chapter 117, Personal Wireless Service Facilities; Exhibit 3 – reference information from Puget Sound Energy that gives the company's observations more so than recommendations; and Exhibit 4 - an email from staff to Mr. Bergstrom that embodies a series of emails asking questions about the ordinance and asking what might be clarified.

The Planning Director Eric Shields acted as the hearing body from the City standpoint. Following a recommendation from the Planning Director after the public hearing, the amendments will go before the City Council, after which they will return to the Houghton Community Council for final approval.

Mr. Givens noted that this is a legislative issue, and not quasi-judicial.

Mr. Bergstrom gave a broad summary of the goals in the proposed changes to the chapter. Basically, the theme throughout the ordinance is to encourage certain types of personal wireless service facilities, and discourage individual monopoles scattered throughout the city. He explained that staff would like to see more co-location of antennas and more use of existing structures to support those features, such as utility poles. Staff is proposing a Process IIA for some installations, which would not involve Community Council review. . The ordinance provides that all antennas would be below the roofline except the whip antennas.

Ms. Pringle suggested that it would be helpful to have some photographs or examples at a future meeting.

Mr. Shields added that the proposal would not increase the maximum allowable height of the pole, but might increase the actual height of the pole, extending the pole so they can put an antenna on top of it, which might take it from 30 feet to 40 feet.

Some industry representatives have suggested increasing allowable tower height to perhaps 60 feet, but the 40-foot limit has been well established in the city, and staff is not proposing 60 feet. Staff is proposing that allowable clearances above the electrical lines be increased from 10 feet to 15 feet above the transmission lines. Staff is also proposing that in a residential zone PSE poles greater than 40 feet existing could be allowed to have antenna added to them.

Ms. Cox suggested having color copies made of the exhibit. There was agreement this would be helpful.

Mr. Goggins suggested that it would help to know what neighboring communities are doing on this issue.

Mr. Bergstrom explained that staff had reviewed these, finding that several cities had recently redone their PWSF regulations, but the structure of the regulations of each community is so different than Kirkland's that it is hard to make comparisons. Also individual sensitivities and policies of each community have to be factored into the equation.

Andrew Neninger, 19807 North Creek Parkway, Bothell, WA 98033, with T-Mobile, and also a Kirkland resident at 218 5th Place S, commented that he appreciates that Kirkland has taken a look at the code. He tried to give an industry perspective of what they have seen over the last few years. Beginning in 1998, service goals consisted of mobility in commercial areas along major corridors and routes. But cell users and customers are now asking for coverage everywhere they go—not only at work, but also at home. T-Mobile gets many complaints, and is trying to cover residential areas and trying to satisfy its customers. He appreciated that Kirkland is considering residential and trying to balance effectiveness with aesthetics. He explained that Bellevue just did a code change, and he thinks that city found a balance. He would encourage the Community Council to compare what Kirkland is trying to do with what Bellevue has done. Bellevue now allows cell phone providers to go through an easier process in nonresidential areas, and allows more height in the non-residential areas. Rooftop heights and utility poles can be higher than 40 feet in non-residential areas because Bellevue prefers the antennas to be in non-residential areas rather than the residential areas. He added that omni antennas are not used any more. T-Mobile has to reuse the frequencies that it has. He explained that omnis are obsolete, as no carrier is using them today, so he encouraged Kirkland to consider what they are saying about omni antennas, and see if panel antennas could be incorporated in there. T-Mobile has found in other communities that the use of utility poles is an effective use of existing structures in areas where there are no commercial buildings or water tanks. He said it was not clear

to him if they could exceed 40 feet in residential areas, but in order to put their antennas on they have to exceed the height. There are safety standards that companies require of them. He encouraged them to come up with an ordinance that says companies can only exceed the poles by X number of feet. Use of the right-of-ways for utility poles is crucial for them as well, so they do not have to build monopoles. He suggested that the required half-mile diameter review for monopoles is somewhat cumbersome and onerous, because they would have to go to every nonresidential use, and confirm that a landlord did not want to do business with them, and then they would have to give the City an explanation of why that owner did not want to do business. He suggested instead a 500-foot radius. He also encouraged them to look at how they tier the process, going from a building permit only in a nonresidential area on a water tank, and tier down to a conditional use permit in a residential area. The tiers of the structure should be reviewed again, because developers of wireless look for the easiest way possible to provide service. He recommended that the City find a way to encourage wireless providers to the maximum possible to go into lower utility areas. He suggested that they provide an easier process on those areas about which the City does not care, and be more stringent on those areas of concern.

Mr. Bergstrom inquired if he was saying that T-Mobile could go into certain nonresidential areas in Kirkland and provide adequate service to residential areas as well.

Mr. Neninger replied that the answer is ultimately no because the areas are huge and T-Mobile is not going to be able to provide residential service without going into residential areas . Rather than expanding a utility pole in someone's driveway, why not allow extending the height on a church. The City could elaborate on more use of the parks. Then they are in the community but not necessarily in someone's front yard. This would be valuable. Find ways to make these things easier. He said that he hopes there are other steps to this process. He would love to sit down with staff to give them input and insight into what T-Mobile is going to look like in the next few years.

Mr. Givens noted that the ordinance talked about using the light standards at the Lake Washington High School football field.

Mr. Neninger explained that they have used light standards in many areas, and does not know why they have not been in Kirkland. He made one other suggestion, concealing antennas. There are alternatives to panel antennas stretched out in a line. They could do things that allow a balance of need and protection.

Ms. Pringle said she would like to see what is available and would be in 2 or 3 years.

Mr. Neninger offered to provide a number of photo simulations of what T-Mobile has done. Regarding one-to-one setbacks no provider is going to want to do that—a 40 foot tall structure would encumber 80 feet of land. T-Mobile's equipment can be used in shelters, place in wood or steel, and can be architecturally enhanced so it looks like the building it is near.

Mr. Goggins inquired if Verizon or Sprint were here would they be recommending the same thing.

Mr. Neninger responded that all providers are similar with some small differences, but the equipment structures are roughly the same—about 72 inches high, 30 inches wide, and 30 inches deep. This can be put underground rather than in the right-of-way above ground, but the cost to dig a hole and put the equipment in there is $80,000. T-Mobile's primary concern is its customers and servicing them.

Mr. Bergstrom added that money has to be one concern but there can also be utility constraints when equipment structures are placed underground. Bellevue has a 30-inch limit for height of equipment structures located in right-of-ways.

Mr. Nickle suggested that staff could invite the other vendors to come and speak.

If Bellevue has gone through this process extensively, Mr. Whitney suggested starting with what that city has done and modifying that to what Kirkland needs.

Mr. Bergstrom responded that the structures of the two cities' codes are so different, so the codes are very different and the cities' histories are very different. So their results are not directly transferable, but he will go back and look at Bellevue's code again.

Mr. Shields suggested doing some comparisons.

Mr. Goggins recommended doing a spreadsheet comparing different cities and identifying some innovative things other cities are doing.

The cell support structure on 11th and Market Street that has been there about a year is 24 inches in diameter and has three panels that are basically pointing in three different directions. PTS has recommended going to that size. Mr. Shields explained that this was a case of a replacement of a light pole. If staff had understood the proposal better, the replacement pole probably would not have been allowed. City staff has had some discussions with T-Mobile about possibly replacing this at sometime.

Mr. Neninger inquired about what the Houghton Community Council would like to see for the poles—steel, wood or wooden laminate, and what diameter is acceptable.

Mr. Goggins wanted to know what the citywide impact would be from the number of poles the providers would need.

Mr. Bergstrom noted that there is also the issue of internal versus external cables.

There was agreement that staff would schedule another hearing, and let the HCC members know when they are ready.

Mr. Shields asked the Community Council if there was anything they had heard that should be off limits or anything that sounds particularly promising.

~~Ms. Pringle responded that this depends on the size of the panels. She thought anything that extends above a telephone pole looked fine.~~

Mr. Goggins said he would prefer the nonresidential areas that extend what is already being done, so nothing is done in the residential areas except on nonresidential uses in residential areas. He requested to see examples and pictures, as well as some sites to go view.

When Mr. Bergstrom asked if there were things that did not seem acceptable, Ms. Pringle mentioned that appeals for Planning Official decisions should be for any affected party, not just the applicant.

Ms. Cox explained that there is no public notice, and there is not a lot of discretion in the Planning Official's decisions. This is why the appeal process is proposed to be limited to the applicant only. Staff will look at this further.

The Chair closed the public hearing at 8:38 p.m. Another hearing will be scheduled when the requested information is ready. The Planning Director left the meeting.

## ADMINISTRATIVE REPORTS AND COMMUNITY COUNCIL DISCUSSION

The Houghton Community Council is looking for someone to write the voters' pamphlet. This is due on September 25. The next meeting is on September 26. Individual comments are due by August 30.

## ADJOURNMENT

Motion by Mr. Hess and second by Mr. Goggins to adjourn the meeting at 8:41 p.m. Motion carried (6-0).

Hugh Givens, Chair

Nancy Cox

Nancy Cox, Development Review Manager
Department of Planning and Community Development

Recording Secretary: Karen Nolz
PROFESSIONAL OFFICE SERVICES

PTS

PACIFIC TELECOM
SERVICES, LLC

August 24, 2005

City of Kirkland
Planning and Community Development Department
123 5th Ave.
Kirkland, WA 98033

RE: Personal Wireless Service Facilities Regulations – Chapter 117 – Code Revisions

Dear City of Kirkland,

First and foremost, thank you for the opportunity to comment on the draft ordinance changes. Accompanying this letter is a redlined version complete with explanations of our wireless industry redline changes.

**Overview:**
The wireless industry has changed a great deal since the last code revision in 1998. Although the ordinance revisions make some strides towards updating the code to today's wireless siting practices and for that we commend the City of Kirkland's efforts, there is some information that is not applicable and areas that could be tweaked to further pursue the intended goal of the new ordinance:

- Antennas: Whip and omni-antennas are rarely used in today's wireless siting practices. Directional-panel antennas comprise of 90% of all new urban wireless sites being implemented in 2005. The change has occurred in the past few years due to the high increase in customers demanding a higher quality and more diverse wireless services. Wireless siting provisions for directional, panel antennas are vital to address today's wireless placement needs and to provide quality coverage and address today's wireless voice, text, and internet coverage to Kirkland's neighborhoods.

- The review process for wireless carriers collocating antennas on existing wireless towers, that do not increase the height of the tower, should be reviewed in either a Planning Official Decision or a Permit I process regardless of the underlying zone. If the review process for a collocation on an existing facility becomes as burdensome as a new tower, there is no incentive for a wireless carrier to pursue the former. The quickest, easiest and hassle free way to get wireless carriers to

EXHIBIT 1
FILE NO. IK-03-13

locate where a jurisdiction wants them to, is to make the processes to collocate on existing structures as easy as possible. The current draft code revisions do not achieve this, especially in residential zones.

- Allow for more height in commercial zones to relieve the burden on residential zones. Tower heights such as "40 feet" do not provide much coverage for wireless carriers especially in areas with varied topography, mature vegetation and various building heights. The best way to maximize the use of commercial zones is to allow for greater height flexibility.

- Maximize rooftop potential with a 15' height allowance for all antennas regardless of type, but enforce screening requirements in all zones. Again, stream-lining the review process into a Planning Official Decision or a Permit I process will encourage wireless carriers to pursue existing structures and not chose to pursue a new freestanding tower.

- Utility poles should be utilized as much as possible to maximize the use of existing tall vertical structures and to avoid the need for new freestanding towers. PSE is in the process of reviewing the current ordinance and will provide comment with regards to separation and diameter of which information, we will concur and support.

The bulleted comments are to serve as a supplement to the redlined version we have included with this summary of which we also view as very important. Please to not hesitate to call me with questions or comments at 206.240.0173 should you like further information or insight into today's wireless facility deployment.

Thank you again for the opportunity to comment.

Respectfully,

Kristi Park
Site Acquisition and Land Use
Pacific Telecom Services

**DRAFT 08/05/05**

## Chapter 117 - PERSONAL WIRELESS SERVICE FACILITIES

*NOTE: This view of the draft ordinance displays the proposed text changes between the existing Chapter 117 KZC and the proposed ordinance. Existing text that would be deleted is marked with a strike-through (~~this is an example~~) and new proposed wording is highlighted by an underline (this is an example), subject to further revision resulting from the public review process.*

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### 117.05 User Guide

This Chapter establishes the conditions under which Personal Wireless Service Facilities (PWSF) may locate and operate in different areas of the city. The provisions of this Chapter add to and in some cases supersede the other regulations of this code. If you wish to install, operate, or alter PWSF in Kirkland, you should read the provisions of this Chapter.

### 117.10 Policy Statement

~~The City has received requests to site towers and antennas.~~ The purpose of this Chapter is to provide specific regulations for the placement, construction, modification and removal of ~~personal wireless service facilities~~ PWSF. Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 332(c)(7), the provisions of this Chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent personal wireless services.



EXHIBIT 2
FILE NO. IK-03-13

1. The goals of this Chapter are to:

~~(i)~~ a. ~~e~~Encourage the location of towers in nonresidential areas and to minimize the total number of tall towers throughout the City,

~~(ii)~~ b. ~~e~~Encourage the joint use of existing tower sites,

~~(iii)~~ c. ~~e~~Encourage users of towers and antennas to locate them, to the extent possible, in areas where the impact on the City is minimal,

*Explanation: In order to achieve the three aforementioned high-lighted provisions, the redlines included in the body of this draft ordinance must be considered.*

~~(iv)~~ d. ~~e~~Encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas,

~~(v)~~ e. ~~s~~Strongly encourage the providers of personal wireless services to use concealment technology,

~~(vi)~~ f. ~~p~~Provide standards for the siting of ~~personal wireless service facilities~~ PWSF and other wireless communications facilities (such as television and AM/FM radio towers), and

~~(vii)~~g. ~~f~~Facilitate the ability of the providers of personal wireless services to provide such services throughout the City quickly, effectively and efficiently.

h. Prioritize the location of PWSF on existing structures such as ball field lights, transmission towers, utility poles or similar structures, particularly when located on public property.

2. Accordingly, the City Council finds that the promulgation of this Chapter is warranted and necessary to:

~~1~~ a. ~~To m~~Manage the location of towers and antennas in the City;

~~2~~ b. ~~To p~~Protect residential areas and other land uses from potential adverse impacts of towers and antennas;

~~3~~ c. ~~To m~~Minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;

~~4~~ d. ~~To a~~Accommodate the growing need for towers and antennas;

~~5~~ e. ~~To p~~Promote and encourage shared use and co-location on existing towers as a desirable option rather than construction of additional single-use towers; and

~~6~~ f. ~~To a~~Avoid potential damage to adjacent properties through engineering and proper siting of ~~personal wireless service facilities~~ PWSF.

117.~~05~~ 15 Definitions

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below:

1. "Antenna" shall mean any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole,

light standard, building or other structure for the purpose of providing personal wireless services and its attendant base station. Types of antennas include:

a. An "omni-directional antenna" receives and transmits radio frequency signals in a 360-degree radial pattern. ~~For the purposes of this chapter, a~~

b. A "whip antenna" is an omni-directional antenna that is up to 15 feet in height and up to four inches in diameter.

~~b.~~ c. A "directional or panel antenna" receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.

2. "Antenna height" shall mean the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. ~~Measurement of antenna height shall include the base pad, support structure, antenna, lightning rods, and other appurtenances.~~

3. "Cell site" shall mean a tract or parcel of land or building that contains the ~~personal wireless service facilities~~ PWSF including any antenna, antenna support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

4. "Co-location" shall mean the use or placement of PWSF ~~a common personal wireless service facility or~~ on a tower by two or more personal wireless service providers or by one personal wireless service provider for more than one type of communication technology.

5. "Equipment structure" shall mean a facility, shelter, cabinet or vault used to house and protect the electronic equipment necessary for processing wireless communications signals. Associated equipment may include, for example, air conditioning, backup power supplies and emergency generators.

6. "Existing structure" shall mean, but is not limited to, a building, ~~electrical transmission tower, flagpole, light standard,~~ utility pole, water tank, and structures accessory ~~structures~~ thereto.

7. "FAA" shall mean the Federal Aviation Administration.

8. "FCC" shall mean the Federal Communications Commission.

9. "Nonresidential" or "nonresidential zone" shall mean (1) all portions of the City (including rights-of-way adjacent thereto, measured to the centerline of the right-of-way) in an area not zoned residential as defined in this Chapter, or (2) the I-405 or SR 520 right-of-way.

10. "Personal wireless services" and "personal wireless service facilities" (PWSF), as used in this Chapter, shall be defined in the same manner as in Title 47, United States Code, Chapter 5, Subchapter III, Part I, Section 332(c)(7)(C), as they may be amended now or in the future.

11. "Replacement structure" shall mean a structure that replaces or is intended to replace an existing structure of a similar design and similar primary purpose, to enable the installation of new or additional PWSF on that structure. If a "replacement structure" meets the definition of "tower", it shall be considered for the purpose of regulation to be a "tower".

~~11~~ 12. "Residential" shall mean portions of the City in the following zones: RS 35; RSX 35; RS 12.5; RSX 12.5; RS 8.5; RSX 8.5; RS 7.2; RSX 7.2; RS 5.0; RSX 5.0; RM 5.0; RM 3.6; RM 2.4; RM 1.8; WD I; WD II; WD III; PLA 1; PLA 2; PLA 5A, D, E; PLA 6A, C, D, E, F, H, I, J, K; PLA 7A, B, C; PLA 9; PLA 15B; PLA 16; PLA 17; and P; and rights-of-way adjacent thereto, measured to the centerline of the right-of-way.

~~12~~ 13. "Tower" shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including any antenna support structure, self-supporting lattice towers or monopole towers~~, and does not include utility poles~~, "Tower" shall include the replacement of a utility pole if the replacement pole (a) is in a residential zone and will have a diameter more than 50% greater than the pole it replaces or a diameter greater than ~~16~~ 24 inches; (b) is in a nonresidential zone and will have a diameter more than 100% greater than the pole it replaces or a diameter greater than 24 36 inches; (c) will be more than ~~15'~~ 21' taller than the pole it replaces in any zone; and/or (d) results in a structure that is designed and used primarily for the support of one or more antennas and secondarily for the support of the utility or utilities supported by the utility pole being replaced. *Explanation: In order to support the connecting coax runs from antenna to ground equipment, a diameter larger than 16" is needed in most all cases to provide for appropriate function of the site. A height increase of 21' is often necessary to provide the standard PSE 15' separation from the power lines to the bottome of antennas. Most wireless antennas range from 3' to 8' and at a minimum, allowance is necessary for the most common antenna of 6'.*

14. "Utility pole" shall mean a structure designed and used primarily for the support of electrical transmission or distribution wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, pedestrian paths, or ballfields, and includes flagpoles.

117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability

1. New Facilities - All new ~~personal wireless service facilities~~ PWSF, including without limitation antennas and towers, new equipment structures (including new equipment structures associated with PWSF mounted on existing structures), and replacement or reinforcement of personal wireless service antennas and towers, shall comply with this Chapter unless the applicant had a vested application to site a ~~personal wireless service facility~~ PWSF under a prior version of this code, or unless specifically exempted by KZC 117.25.

2. Existing Facilities - All ~~personal wireless service facilities~~ PWSF, including without limitation antennas and towers, shall be allowed to continue their usage as they presently exist as of the effective date of this Chapter. Routine maintenance and reconfiguration of ~~antennas~~ PWSF components, including the replacement of equipment structures where there is no increase in size, shall be permitted on such existing antennas and towers. However, any reconfiguration that increases the height or number of antennas ~~height~~ or results in the replacement of an existing tower, shall be treated like a new facility.

3. ~~117.65~~ Other Wireless Communication Facilities - All of the provisions of this Chapter, which address personal wireless services and ~~personal wireless service facilities~~ PWSF, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television, satellite radio, and AM/FM radio towers) to the maximum extent allowed by law.

117.25 Exemptions

The following are exempt from the provisions of this Chapter and shall be permitted in all zones, subject to any other applicable provisions of this Code:

1. Temporary PWSF during an emergency declared by the City.

2. Licensed amateur (ham) radio stations.

3. Satellite dish antennas less than two meters in diameter when located in non-residential zones, and satellite dish antennas less than one meter in diameter when located in residential zones, including direct to home satellite services, when used as an accessory use of the property.

117.30 Prohibited Devices

Except as exempted pursuant to KZC 117.25, PWSF that are not permanently affixed to a support structure and which are capable of being moved from location to location (e.g., "Cell on Wheels") are prohibited.

117.~~55~~ 35 Permit ~~Requirement~~ Required

In all instances, a permit must be obtained from the City before any ~~personal wireless service facilities~~ PWSF may be constructed on any public or private land or right-of-way, including I-405, SR 520, and the Burlington Northern Railroad right-of-way, within the City limits.

117.~~25~~ 40 Co-Location Encouraged

To minimize potential adverse visual impacts associated with towers, co-location of antennas by more than one provider on personal wireless service towers shall take precedence over the construction of new personal wireless service towers. Providers are encouraged, by the opportunity for expedited review as provided in this Chapter, to co-locate antennas onto personal wireless service towers. Unless the applicant has shown by ~~substantial evidence that it has made a good faith effort to mount the antenna on an existing personal wireless service tower demonstration that the attempt to collocate on an existing personal wireless service tower was not economically~~ evidence that the attempt was spatially, structurally, or technically infeasible, the City may deny the application to construct a new personal wireless service tower.
*Explanation: There is no definition of "substantial evidence", wording such as "shown by evidence" will protect both the carrier and the City's quest to find proper locations in wireless siting.*

117.~~20~~ 45 ~~Priority of Locations~~ Application Review Process

~~1.~~ An application to site a ~~personal wireless service facility~~ PWSF shall be ~~subject~~ processed according to the ~~criteria contained in the~~ table below. An application shall not be accepted for review unless the applicant has first satisfied the pre-submittal meeting requirements established by KZC 117.50. For additional requirements pertaining to PWSF, equipment structures, and screening, see KZC 117.70., 117.75, and 117.80. ~~Only when the application does not meet a criteria shall the next group of criteria be considered. The hierarchy of criteria is divided into three separate approval processes: administrative decision, Process I permit and Process IIB permit. The order of criteria for locating personal wireless service facilities shall be as follows:~~

| Review Process | Request | Additional Requirements |
|---|---|---|
| 1. ~~Administrative~~ Planning Official | ~~1~~a) Co-location of antennas on existing personal wireless service towers in | |

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| Decision | nonresidential zones and residential zones.<br>Explanation: The new code revisions do not encourage collocation unless all co-lo's are allowed in a less intensive review process regardless of underlying land use classification. If it is just as easy to build a new tower as collocate on an old tower in a residential zone, the incentive to pursue the latter scenario is lost.<br>----------<br>~~2~~b) Attachment of antennas to existing ~~structures~~ (but not replacement) buildings or mechanical equipment enclosures in nonresidential zones.<br>----------<br>~~3) Equipment structures may not exceed 500 cubic feet with a 5-foot height limit in residential zones.~~<br>----------<br>4c) Antennas ~~may~~ to be attached to existing or replacement ~~ball field light standards, electrical transmission towers,~~ water tanks or ~~existing~~ utility poles in ~~residential zones~~ any zone. | ----------<br>i. ~~Only omni-directional antennas may be placed on top of, or extend above the roofline of, a building or mechanical equipment enclosure;~~<br>~~ii. Antenna Height: wWhip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>Explanation: Almost all wireless antenna requests utilize panel/directional antennas. Whip and omni antennas were used in the primitive days of wireless services and are rarely used. Make all regulations applicable to all antenna types.<br>iii. ~~otherwise,~~ Other facilities, such as panels, may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure~~, but may not project above the roofline of the structure to which they are attached;~~<br>Explanation: Rooftops are excellent areas for location wireless equipment. Panel antennas can be screened by variety of painting methods, building stealth facades into the design of the rooftop etc. Limiting rooftop use for antennas often forces wireless carriers to build new towers. We would encourage setting a height limit (ie. 15' above existing height of the rooftop and requiring screening of the antennas (all varieties of antennas).<br>~~all appurtenances and screening (including personal wireless service facilities) may not exceed 5% of the total roof area of a building and/or 5% of any façade of a building.~~<br>----------<br>----------<br>i. Antenna Height: If located on a water tank, or on a utility pole that is not used to convey electrical service, ~~W~~whip antennas may exceed the original structure height prior to replacement by a maximum of ~~15~~ 21' feet ~~and other antennas may exceed the structure height by a maximum of 10 feet.~~<br>ii. If in a residential zone, antennas attached to utility poles used to convey electrical service may extend no higher than ~~15~~ 21 |

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|---|---|---|
| | | feet above the electrical distribution or transmission conductor.<br>iii. If in a non-residential zone, antennas attached to utility poles used to convey electrical service may extend no higher than ~~15~~ 21 feet above an electrical distribution conductor, or 21 feet above an electrical transmission conductor.<br>iv. A replacement structure that will replace an existing utility pole may not exceed the diameter of the existing pole by more than 50%, and in no case shall exceed a diameter of ~~16~~ 24 inches.<br>Explanation: PSE will provide direct comments with regards diameter allowances. Aforementioned diameter widths are estimates of feasible diameters. |
| 2. Process I Permit | ~~1~~a) New personal wireless service towers and associated equipment in nonresidential zones.<br>---<br>~~2. Attachment of antennas to existing structures in nonresidential zones:~~<br>~~• Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>~~• Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>~~• All appurtenances and screening (including personal wireless service facilities) may not exceed 10% of the total roof area of a building and/or 10% of any façade of a building.~~<br>---<br>b) Antennas to be attached to existing or replacement water tanks or utility poles in any zone.<br>--- | i. Must be located at least a distance equal to 100% of antenna (or wireless structure?, confused) height from any property line adjacent to or across the street from a residential use or residential zone, and in no case less than 10 feet from any property line. See KZC 117.70.4.<br>~~ii. Maximum allowable antenna height is a maximum of 40 feet.~~<br>Explanation: If Kirkland wants to minimize locations in residential zones, there must be an allowance to maximize the height potential in the non-residential zones. For example, Mercer Island caps the height at 110' and requires the antennas on the tower to be architecturally compatiable with surrounding environments (ie. tower painted dark brown in an forested area with flush mounted antennas. Other design solutions include stealth flagpoles, light standards etc. whereas the antennas are wholly contained in vertical structures compatible with the non-residential land uses.<br>--- |

| | | |
|---|---|---|
| | c) Co-location of antennas on personal wireless service towers in a residential zone. | ----------<br>i. A replacement structure that will replace an existing utility pole may not exceed the diameter of the existing pole by more than 100%, and in no case shall not exceed a diameter of 24 inches.<br>----------<br>i. May include ancillary equipment structures.<br>ii. May include structural alterations to the personal wireless service tower.<br>iii. Applicant shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available.<br>iv. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, ~~and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site.~~<br>v. The co-location shall not result in any height increase to the tower unless failure to allow for a height increase would directly require a new wireless tower to be constructed in non residential zones.<br>Explanation: Utilizing existing vertical structures is ideal in urban areas. Some jurisdictions cap allowable height increases by 20' to ensure that towers do not get inappropriately tall. |
| 3. Process IIA Permit | a) Any PWSF that is in a nonresidential zone and is unable to meet the criteria for review as a Planning Official decision or Process I permit. | i. The personal wireless services provider is required to demonstrate that it contacted the landowners or owners of structures taller than 30 feet within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied.<br>ii. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to |

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| | | other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site. |
| ~~3~~ 4. Process IIB Permit | ~~1~~a) Any ~~personal wireless service facility~~ PWSF that is unable to meet the ~~preceding priority of locational~~ criteria for review as ~~an administrative~~ a Planning Official decision, ~~or~~ Process I permit, or Process IIA permit~~;~~ ~~see also KZC 117.70~~.<br><br>b) Modification of standards contained in this Chapter, per KZC 117.85. | i. An applicant for a new facility to be located in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available.<br>ii. The personal wireless services provider is required to demonstrate that it contacted the landowners or owners of structures ~~in excess of~~ taller than 30 feet within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied.<br>iii. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site.<br>iv. Tower height within a residential zone shall not exceed 40'.<br><br>The following may not be modified:<br>i. The 40-foot height limit for PWSF in residential zones.<br>ii. The 15-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones. |

~~2. Further Process IIB Permit Requirement –~~ *(incorporated into 117.45.4 – above chart)*

117.50 Pre-Submittal Meeting

Before an application requiring review through Planning Official Decision, Process I, Process IIA, or Process IIB will be accepted for processing, the applicant shall attend a pre-submittal meeting with the Planning Official, as required by KZC 145.12, 150.12, or 152.12; provided, that the Planning Official may waive the pre-submittal meeting requirement for any proposal that the Planning Official deems to be substantially compliant with the provisions of this Chapter.

117.~~45~~ 55 Application Requirements

In the course of reviewing any request for any approval required under this Chapter made by an applicant to install ~~personal wireless service facilities~~ PWSF, the City shall act within a reasonable period of time, taking into account the nature and scope of the request, after an application has been determined to be complete. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

All applications for ~~administrative decision, Process I and Process IIB~~ permits to locate a ~~personal wireless service facility~~ PWSF (including, but without limitation, an antenna or tower in the City) shall be made using forms provided by ~~submitted to~~ the Planning Department and shall be accompanied by the information and support materials identified on said forms. ~~with the applicable requested information (depending upon the type of facility which is involved). A detailed plan that complies with the submittal requirements of this Chapter, and other regulations and ordinances of the City, along with other pertinent information requested by the City shall also be submitted. An applicant's submission may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information depending upon the type of facility which is involved:~~

~~1. All applicants must register their request with the City on a form provided by the City at the time of building permit or right-of-way use permit application.~~

~~2. A scaled site plan clearly indicating the location, type and height of the proposed tower, antennas, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, the equipment structure, fencing, buffering and the type of concealment technology which will be utilized. The full, detailed site plan shall not be required if the antenna is to be mounted on an existing structure.~~

~~3. Photosimulations of the proposed facility from affected residential properties and public rights-of-way.~~

~~4. A current map and/or aerial photograph showing the location of the proposed tower.~~

~~5. Legal description of the parcel, if applicable.~~

~~6. Approximate distance between the proposed tower and antennas, as applicable, and the nearest residential unit, or residentially zoned properties.~~

~~7. Information of sufficient detail to demonstrate that the equipment structure is the minimum size necessary.~~

~~8. A landscape plan showing specific landscape, screening and fencing materials.~~

~~9. A notarized letter signed by the applicant stating that the personal wireless service facilities PWSF will comply with all applicable federal and state laws, including specifically FCC and FAA regulations, and all City codes.~~

~~10. A notarized letter signed by the applicant stating that the antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.~~

~~11. Manufacturers information indicating compliance with adopted noise standards.~~

~~12. The personal wireless services provider must demonstrate that it is licensed by the FCC, if required to be licensed under FCC regulations.~~

~~13. The applicant, if not the personal wireless services provider, shall submit proof of a lease agreement with an FCC-licensed personal wireless services provider if such provider is required to be licensed by the FCC.~~

~~14. Propagation maps shall be provided showing that the tower and antennas are required for present and future network coverage in order to satisfy the requirements of the provider's grid system. The maps shall also demonstrate that the height specified is the minimum height necessary for the tower and antennas, as applicable. The maps shall additionally show coverage areas at the requested height and at lower heights. Finally, they shall show the neighboring or regional facilities with which the facilities in the City can communicate.~~

~~15. If the site is within or adjacent to a residential zone, then a study shall be provided showing why alternative locations are not acceptable.~~

~~16. All providers shall submit satisfactory evidence that the facility is designed for and will provide services primarily for residents of the City and/or visitors within City limits.~~

~~17. See also KZC 117.40(2), Further Process IIB Permit Requirements, and KZC 117.55, Third Party Review.~~

117.60 Determination of Application Completeness

1. Planning Official Decisions: The Planning Official shall determine as soon as possible after receipt of an application whether the application is complete. If the application is not complete, the Planning Official shall identify and communicate the needed components to the applicant. Once the application is complete, the Planning Official shall process the application.

2. Process I, Process IIA, and Process IIB Permits: The determination of completeness for Process I, Process IIA, and Process IIB permit applications shall occur pursuant to the process set forth in Chapters 145, 150, and 152 KZC, respectively.

117.~~50~~ 65 Third Party Review

In certain instances (~~including all~~ particularly Process IIB permit applications) there may be a need for expert review by a third party of the technical data submitted by the personal wireless services provider. The City may require such a technical review, to be paid for by the applicant for the ~~personal wireless service facilities~~ PWSF. The selection of the third party expert shall be by mutual agreement between the applicant and the City, such agreement not to be unreasonably withheld by either party. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering.

The expert review is intended to be a site-specific review of technical aspects of the personal wireless services, facilities and other matters as described herein, and not a subjective review of the site selection. In particular, but without limitation, the expert shall be entitled to provide a recommendation on the height of the proposed facilities relative to the applicant's coverage objectives and system design parameters. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the City or other interested parties. Based on the results of the third party review, the City may require changes to the application for the ~~personal wireless service facilities~~ PWSF that comply with the recommendations of the expert.

117.~~30~~ 70 ~~Design~~ PWSF Standards

1. Context - The location and design of cell sites in the City shall consider the visual and physical impact of the site on the surrounding neighborhood and shall be designed, to the extent feasible, to reflect the context within which they are located.

2. Design Compatibility - ~~Facilities~~ PWSF shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, ~~and~~ design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape to the maximum extent practical.

3. Concealment Technology. ~~- Concealment technology applies to all personal wireless service facilities, including, without limitation, antennas, towers and equipment structures. For any facility, "concealment technology" means the use of both existing and future technology through which a personal wireless service facility is designed to resemble an object which is already present in the local environment, such as a tree, streetlight, or traffic signal. It also includes:~~ Typical PWSF concealment measures are identified herein, and shall be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the PWSF:

   a. For personal wireless service towers:

      If within an existing stand of trees, ~~"concealment technology" means that~~ the tower ~~is to~~ shall be painted a dark color, ~~is~~ and be made of wood or metal.~~, and that a~~ A greenbelt easement is required to ensure permanent retention of the surrounding trees.

      ~~"Concealment technology" for t~~ Towers in a more open setting ~~means that they must~~ shall have a backdrop (for example, but not limited to, trees, a hillside, or a structure) on at least two sides, be a compatible color with the backdrop, be made of compatible materials with the backdrop, and ~~that~~ provide architectural or landscape screening ~~be provided~~ for the other two sides. If existing trees are the backdrop, then a greenbelt easement is required to ensure permanent retention of the surrounding trees.

      In all cases where a greenbelt easement is required, it shall be the minimum necessary to provide screening and may be removed at the landowner's request in the event the facility is removed.

      Antennas shall be integrated into the design of any personal wireless service tower to which they are attached. External projections from the tower shall be limited to the greatest extent technically feasible.

   b. For rooftop antennas or antennas mounted on other structures:

      ~~For o~~ Omni-directional antennas 15 feet or less above the roof~~, "concealment technology" means use~~ shall be of a color compatible with the roof, structure or background.

      ~~For o~~ Other All antennas~~, "concealment technology" means~~ shall use ~~of~~ compatible colors and architectural screening or other techniques approved by the City.

      Antennas shall be integrated into the design of any existing structure or support structure to which they are attached. External projections from the existing

structure or support structure shall be limited to the greatest extent technically feasible.

c. ~~For a~~ Antennas mounted on one or more building facades: ~~"Concealment technology" means~~ shall (a) use ~~of~~ color and materials ~~such that the facility has~~ to provide architectural compatibility with the building. ~~It shall~~ (b) be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible, and ~~shall~~ (c) not project above the wall on which it is mounted.

~~d. For equipment structures: "Concealment technology" means locating within a building, or if on top of a building, with architecturally compatible screening. An underground location, or locating above ground with a solid fence and landscaping, is also considered concealment technology.~~

d. Where feasible, cable and or conduit shall be routed through the inside of the support structure. Where this is not feasible, or where such routing would result in a support structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the support structure. The outside cable or conduit shall be the color of the support structure, and the City may require that the cable be placed in conduit.

e. Optional measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process of KZC 117.45 that the optional measures will be at least as effective in concealing the PWSF as the measures required above.

f. Nonwithstanding the above, the manner of concealment for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

4. Setbacks - ~~Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ The following regulations apply, except for structures located in public right-of-way:

a. New towers shall be setback at least one (1) foot for each one (1) foot of antenna height from any property line adjacent to or across the street from a residential use or residential zone unless otherwise determined by the City that such a setback creates a greater visual impact. The street right-of-way width may be included in the setback measurement. In no case shall a new tower be located closer than ten (10) feet to any property line.

b. Replacement of existing structures to accommodate a PWSF shall be setback at least the same distance as the original structure from any property line adjacent to or across the street from a residential use or residential zone; and the lesser of ten (10) feet or the distance of the original structure from any property line adjacent to or across the street from all other uses or zones, unless otherwise determined by the City that such a setback creates a greater visual impact.

~~9~~ 5. Tower and Antenna Height - The applicant shall demonstrate that the tower and antenna are the minimum height required to function satisfactorily. Personal wireless service towers shall not exceed 40 60 feet in residential zones, as measured from the

Average Building Elevation at the tower base to the highest point of the tower, antenna, or other physical feature attached to or supported by the tower.

6. Antennas On a Utility Pole - Antennas mounted to an existing or replacement utility pole in a residential zone may not project higher than ~~15'~~ 21' above the top of the pole if the pole is not used to convey electrical service or more than ~~15'~~ 21' above the electrical distribution or transmission conductor if the pole is used to convey electrical service.

~~10~~ 7. Antennas On ~~or Above a Structure~~ Building, Mechanical Equipment Enclosure, or Water Tower - Antennas ~~and equipment structures on or above~~ mounted to a ~~structure~~ building, mechanical equipment enclosure, or a water tower shall be subject to the following criteria: *(standards applicable to equipment structures moved to 117.75 below)*

a. Antenna ~~and equipment structure~~ height is measured above the top of the roof, not from the parapet or from the Average Building Elevation of the building, mechanical equipment enclosure, or water tower.

b. ~~Only omni-directional a~~ Antennas may be roof-mounted, but may not be mounted on penthouse roofs unless flush mounted. ~~No panel or directional antennas may be mounted on roofs or project above the roofline.~~ The "roofline" of a water tower that incorporates a curved roof shall be the point at which the vertical wall of the water tower ends and the curvature of the roof begins.

c. ~~Whip~~ Antennas may exceed the structure height by 15 feet and are to be appropriately screened to design with the architectural athestics of the existing rooftop~~, and other omni-directional antennas may exceed the structure height by 10 feet.~~

~~c~~ d. All roof-mounted antennas must be set back from the edge of the roof a distance equal to 100 percent of antenna height unless otherwise determined by the City that such a setback creates a greater visual impact.

~~d. Roof-mounted antennas and equipment structures shall be incorporated into the pitched or stepped roof form, and not appear as a separate penthouse or box.~~

e. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered unless otherwise determined by the City that such a requirement creates a greater visual impact.

f. Antennas may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

g. In no instance shall ~~equipment structures, antenna and related equipment~~ PWSF occupy more than ~~25~~ 10 percent of the total roof area of a building.

~~h.~~ 8. Historic or Landmark Locations - No antennas shall be permitted on property designed as a historic resource or community landmark as identified in the Comprehensive Plan, unless such antennas have been approved in accordance with design requirements pertaining to historic structures.

~~i.~~ 9. Signal Interference - No antennas shall cause localized interference with the transmission or reception of any other communications signals including, but not limited to, public safety signals, and television and radio broadcast signals.

~~j.~~ 10. Support Wires - No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by the UBC to anchor the antennas, antenna arrays or support structures.

~~5~~ 11. Views - ~~Personal wireless service facilities~~ PWSF, including towers, must be located and oriented in such a way as to minimize view blockage.

~~6~~ 12. Lights, Signals and Signs - No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.

~~7. Equipment Structures~~ - *(moved to 117.75, below).*

13. Noise – The installation and operation of PWSF shall comply with the noise standards set forth in KZC 115.95.

~~8~~ 14. Federal Requirements - All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Chapter shall bring such towers and antennas into compliance with such revised standards and regulations in accordance with the compliance deadlines and requirements of such standards and regulations. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense. Additionally, if, upon inspection, the City concludes that a tower fails to comply with such regulations and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards and regulations. If the owner fails to bring such tower into compliance within said 30 days, the City may remove such tower at the owner's expense.

~~7~~ 117.75 Equipment Structures Standards ~~- The standards for equipment structures are as follows:~~

1. Maximum Size in Residential Zones - ~~e~~Equipment structures ~~may~~ shall not exceed ~~500~~ 840 cubic feet and shall be no greater than ~~5~~ 7 feet in height. ~~with a 5-foot height limit in residential zones.~~ Equipment structure enclosures shall not exceed a footprint of more than ~~500~~ 120' square feet. These limitations shall apply to the aggregate size of all equipment structures and enclosures located on a single site, provided that equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone shall not be subject to these limitations.

Explanation: Most wireless carrier's ground cabinent's stand approximately 7' in height and a minimum site compound in urban areas is typically a 10 X 12' configuration.

~~b~~2. Maximum Size in Nonresidential Zones - Gross floor area of equipment structures shall be the minimum necessary but not greater than 240 square feet per provider. Maximum height is 10 feet above average building elevation. These limitations shall not apply to equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone.

3. Equipment Structures Located in Right-of-Way - If ground-mounted, said structures shall not exceed a height of 30 inches. If mounted on poles, said structures shall comply with 117.75.6. Setback requirements do not apply to equipment structures located in the right-of-way.

4. Setbacks When Located on Private Property –

a. New ~~G~~ground-mounted ~~personal wireless service facilities~~ equipment structures associated with a personal wireless service tower, where the tower is located on private property, ~~shall be located at least a distance equal to 100 percent of antenna height~~ shall conform with the underlying zone's setbacks from any property line adjacent to or across the street from a residential use or residential zone and in no case less than 10 feet from any property line~~;~~.

b. New ground-mounted equipment structures associated with antennas attached to existing buildings or water tanks shall be located ~~And~~ a minimum of 10 feet from any property line ~~adjacent to or across the street from all other uses or zones~~.

c. New ground-mounted equipment structures associated with existing or replacement structures located on public right-of-way shall be setback from any property line a distance at least equal to the height of the new equipment, provided that the equipment structure complies with the sight distance requirements of KZC 115.135. unless otherwise determined by the City to have a greater visual impact in complying with said requirement.

5. Equipment structures on or above a structure - Equipment structures on or above a structure shall be subject to the following criteria:

a. ~~Antenna and e~~Equipment structure height is measured above the top of the roof, not the parapet.

~~d~~ b. When mounted to the roof of a building with a pitched or stepped roof form, R~~r~~oof-mounted ~~antennas and~~ equipment structures shall be incorporated into the ~~pitched or stepped~~ roof form, and not appear as a separate penthouse or box.

6. Equipment structures mounted on poles or towers -

a. Equipment structures may be mounted on utility poles or towers. The location and vertical clearance of such structures shall be reviewed by the Public Works Department and also verified by the underlying utility owner to ensure that the structures will not pose a hazard to other users of the right-of-way.

b. Equipment structures mounted on utility poles or towers shall be located in a manner that minimizes clutter and visual impact.

~~a~~7. Compatibility - Equipment structures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.

8. Concealment - ~~For equipment structures: "Concealment technology" means~~ Typical concealment measures for equipment structures are identified herein, and shall be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment structure:

(a) ~~I~~Locating within a building or building appendage constructed in accordance with all applicable City codes, ~~or if~~

(b) Locating on top of a building, with architecturally compatible screening~~.~~ ,

(c) Locating ~~An~~ underground ~~location~~, ~~or~~

(d) ~~I~~Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.80.3, ~~is also considered concealment technology~~. or

(e) If mounted on a utility pole or tower, the equipment structure shall be of a similar color to that of the pole or tower to which it is attached, unless alternative measures are approved by the City as part of the applicable review process.

~~c~~9. Noise Standards -

a. Equipment structures shall be oriented so that exhaust ports or outlets are pointed away from properties ~~which~~ that may be impacted by noise. Equipment shall comply with noise regulations in KZC 115.95. The City may require an assessment of noise after operation begins and remediation if the noise levels created are not within the prescribed limits. Cumulative noise impacts will be measured in cases where there is more than one equipment structure.

b. The installation and operation of equipment structures shall comply with the noise standards set forth in KZC 115.95

117.~~35~~ 80 ~~Landscaping/Buffering~~ Screening

1. General - Landscaping, as described herein, shall be required to screen as much of the new personal wireless service tower as possible, the fence surrounding both the tower and any other ground level features (such as an equipment structure), and in general soften the appearance of the site. The City may allow or require ~~any other form of~~ the use of concealment technology, as described in KZC 117.70.3, either instead of or in addition to required landscaping, ~~if it~~ to achieves ~~the same degree of~~ effective screening ~~as the required landscaping~~. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's discretion, taking into consideration the site as built. If the antenna is mounted on an existing building, and the equipment structure is housed inside the building, landscaping shall not be required.

2. Existing Vegetation - Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance will result in less visual impact of the site on the surrounding area.

3. Buffering - Except as provided below, ~~B~~buffering of ground-mounted ~~personal wireless service facilities~~ PWSF shall be required around the perimeter of the facility. Landscape buffering shall ~~at a minimum~~ comply with the requirements of KZC 95.25~~(3)~~.3, **(((note: KZC reference may change due to Ch 95 revisions)))** except that all trees must be evergreen; provided, that the City may approve or require optional buffering measures, if the City determines that such optional measures will provide effective screening. Such optional measures include, but are not limited to, the following:
   a. Walls or solid fencing, of a height at least as high as the equipment it screens, subject to KZC 117.80.4 below;
   b. Architectural features, such as parapets, mechanical penthouses, or building fin walls.
   c. Climbing vegetation supported by a structure such as a fence or trellis, of a type and size that will provide a dense visual barrier at least as high as the equipment it screens within two years from the time of planting; or
   d. The natural topography of the site shall be retained to a reasonable buffer zone as determined by the applicant and the City ~~or the adjoining property or right-of-way.~~

Explanation: Neighboring property and ROW can not be subjected to buffers due to the actions of a neighboring property. All buffers must remain on the same property as the wireless site is located.

Buffering shall not be required for PWSF located in a public right-of-way and which is subject to review as a Planning Official Decision.

4. Fencing - Fencing may be allowed or required if it is needed for security purposes, or if it is part of concealment technology. The use of chain link, plastic, vinyl or wire fencing is prohibited unless it is fully screened from public view. Landscaping shall be installed on the outside of fences. Fencing installed specifically for the purpose of screening ground-mounted PWSF shall not be taller than necessary to provide appropriate screening.

5. Maintenance – The applicant shall maintain the screening in good condition and shall replace any plants required by this chapter or approved or required as part of the permit approval that are unhealthy or dead. In the event that ~~landscaping~~ screening is not maintained at the required level, the City, after giving 30 days' advance written notice to the provider, may maintain or establish the ~~landscaping~~ screening and bill both the landowner and provider for such costs until such costs are paid in full.

6. Nonwithstanding the above, the manner of screening for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

117.~~70~~ 85 Modifications of Chapter Provisions

Provisions of this Chapter shall not be subject to variances described in Chapter 120 KZC. However, through Process IIB, Chapter 152 KZC, the City may consider modification of standards in the Chapter except for:

1. The ~~40~~ 60 foot height limit for personal wireless service ~~facilities~~ towers in residential zones; and/or

2. The ~~15~~ 21-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones.

~~2. A 20-foot minimum distance between a ground-mounted personal wireless service facility and any property line adjacent to or across the street from a residential use or residential zone.~~

117.~~40~~ 90 Non-Use/Abandonment

1. Bond - The City may require a bond or other suitable performance security as per Chapter 175 KZC to cover the costs of removal of the antenna or tower.

~~2. Annual Report - The provider must confirm in writing to the City on an annual basis that the personal wireless service facility is still in use on a form to be provided by the City.~~

~~3~~ 2. In the event the use of any tower or antenna will be discontinued for a period of 60 consecutive days, the owner or operator shall so notify the City in writing, and the tower or antenna shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and affidavits from the tower or antenna owner or operator regarding the issue of tower or antenna usage. Upon such abandonment, the owner or operator of the tower or antenna or the owner of the property upon which such facility is located shall have an additional 60 days within which to:

a. Reactivate the use of the tower or antenna or transfer the tower or antenna to another owner or operator who makes actual use of the tower or antenna; or

b. Dismantle and remove the tower or antenna. If such tower or antenna is not removed within said 60 days from the date of abandonment, the City may remove such tower or antenna at the facility owner's and property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

At the earlier of 60 days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval of the tower or antenna shall automatically expire.

117.95 Removal From City Property - When Required

A PWSF mounted to any City-owned property, utility pole, or other structure shall be removed if the City deems removal is necessary for the undergrounding of utilities, the development or redevelopment of City-owned property, or the demolition or alteration of a City-owned building or other structure. The PWSF shall be removed at no expense to the City.

117.~~75~~ 100 Appeals and Judicial Review

~~Appeals of administrative decisions shall be processed according to the appeal procedures for Process I; except, that any affected party may appeal and participate in the appeal; the time to appeal is taken from the date of administrative decision; and distribution of the appeal hearing notice by the Planning Official shall be to the applicant, appellant, the official newspaper of the City, and posted on public notice sign(s).~~

1. An applicant may appeal a Planning Official decision to the Hearing Examiner. A written notice of appeal shall be filed with the Planning Department within fourteen (14) days of the date the Planning Official's decision was mailed or otherwise delivered to the applicant. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least seventeen (17) days prior to the hearing. The applicant shall have the burden of proving that the Planning Official made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse, or modify the decision being appealed.

2. Appeals of Process I, IIA, or IIB permits are processed, and judicial review shall occur, according to the appeal and judicial review procedures and provisions for ~~either~~ Process I, IIA, or IIB respectively.

117.105 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity or other actions approved under this Chapter within one year after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 117.100, the running of the one year is tolled for any period of time during which a court order in said judicial review proceeding prohibits the development activity or other actions. The applicant must substantially complete construction for the development or other actions approved under this Chapter and complete the applicable conditions listed on the notice of decision within two years after the final approval on the matter, or the decision becomes void. For development activity or other actions with phased construction, lapse of approval may be extended when approved under this Chapter and made a condition of the notice of decision.

117.110 Complete Compliance Required

1. General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this Chapter in order to do everything authorized by that approval.

2. Exception – Subsequent Modification – The Planning Official may approve a modification to the permit approved for the PWSF if:

   a. The modification is minor and will not substantially change the proposed facility; and

   b. The proposed modification will comply with the provisions of this Chapter in effect at the time of the modification request; and

   c. There will not be any substantial changes in the impacts on the neighborhood or the City as a result of the change.

   Any modification, other than as specified in paragraph 2 of this Section, must be reviewed and decided upon as a new PWSF approval under this Chapter.

117.115 Time Limit

Any time limit, pursuant to Chapter 36.70B RCW, upon the City's processing and decision upon applications under this Chapter may, except as specifically otherwise stated in this Chapter, be modified by a written agreement between the applicant and Planning Director. In the event a permit constitutes or presents a special circumstance under the provisions of this Chapter, the time limits for the City to make a final decision and issue its notice of decision under Chapter 36.70B RCW are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

117.120 Compliance With Other City Codes

Compliance with the provisions of this Chapter does not constitute compliance, or remove from the applicant the obligation to comply, with other applicable provisions of this Code, the Comprehensive Plan, or any other ordinance or regulation of the City including, but not limited to, regulations governing construction or implementing the State Environmental Policy Act or the Shoreline Management Act.

117.~~80~~ 125 Conflict

Notwithstanding the requirements of Section 117.120 above, ~~To~~ to the extent that any provision or provisions of this Chapter are inconsistent or in conflict with any other provision of the Zoning Code, Comprehensive Plan or any ordinance or regulation of the City, the provisions of this Chapter shall be deemed to control. ~~Personal wireless service facilities~~ PWSF are permitted in the City pursuant to this Chapter notwithstanding the fact they are not mentioned in the use zone charts in Chapters 15 through 65 KZC.

117.~~60~~ 130 Violations and City Remedies

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Chapter 170 KZC, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this Chapter and all other remedies provided at law or in equity.

FROM PSE

# Reference information pertaining to proposed Kirkland PCS Code revision

**Definition of Tower vs Utility pole**

1) All structures supporting PSE facilities are considered to have as their primary purpose the support of electrical distribution and/or transmission systems. The exception to this is communication towers/poles in substations which are replaced to support pcs, with PSE communications antenna still attached. Such structures would be considered to be towers.

**Differentiation by increase in diameter**

1) Average diameter at ground line of standard distribution pole (45 ft class 3) is approximately 12 inches.
2) Average diameter at ground line of standard distribution pole (75 ft class 1) is approximately 16 to 18 inches.
3) Average diameter at ground line of pcs replacement pole (60 ft to 90 ft H3 to H5) is approximately 18 to 24 inches.*
4) Does not include conduit.
5) Dimensions of laminate poles tend to be slightly larger at ground line. Addition of cable raceway covers to hide coax increases dimensions by ~ 10 inches.

* Height of replacement pole based on 15 ft increase criteria indicated by City of Kirkland.

RECEIVED 8/29/05 KB

**Replacement pole allowed height increases**

1) PSE separation clearances are:
   - Distribution – 7 ft (w/ 10 preferred)
   - Transmission - 10 ft (w/ 15 preferred)
2) Clearance is from bottom of antenna to top most conductor.
3) Variances to these clearances may be granted on a case by case basis.
4) PCS panel antenna seen for co-location generally run from 4 ft to 8 ft in length.

# Comments pertaining to proposed Kirkland PCS Code revision

**Definition of Tower vs Utility pole**

1) All structures supporting PSE electrical systems are designed, installed, maintained and fully owned by PSE. As such they remain exempt from provisions of the UBC/IBC. Applicability of UBC/IBC provisions to attached third party equipment (i.e. pcs antenna) is the purview of the jurisdiction.
2) PSE has no opinion with regard to defining replacement utility poles as "towers" as it pertains to which permitting process is applicable.

**Differentiation by increase in diameter**

1) Use of the 50 % limit to determine permitting process appears to be workable. However the 16 inch limitation does not, as all replacement poles would exceed that limit.
2) The 100% / 24 inch limitation should accommodate most utility pole replacement sites, except where internalization of coax is required.
3) The pole diameter limitation works directly against the directive for concealment. Hiding cable inside a utility pole requires use of steel poles or laminate wood poles with covered raceways. Use of either type results in a larger diameter at ground line.

**Replacement pole allowed height increases**

1) Minimum allowed height increase of 15 ft is sufficient to allow for attachment of one flush mounted, 3-sector array of antenna sized up to 8 ft in length (i.e. three antenna, one per sector) on distribution poles.
2) Minimum allowed height increase does not allow for attachment of antenna exceeding 5 ft in length on transmission poles, without a PSE variance on separation clearances.
3) Variance for transmission poles are easier to grant than for distribution.
4) Minimum allowed height increase does not allow for expansion / second carrier co-location.*

EXHIBIT 3
FILE NO. IK-03-13

* Could result in carriers having to increase number of sites to meet capacity growth, rather than add antenna to existing sites. Replacement utility poles can be (and are) designed to accommodate future growth (i.e. adding additional array extended above initial array) at initial installation. However this tends to result in a slightly larger pole at ground line.

5) Minimum allowed height increases may not accommodate PSE generated increases in height. (Changes in required pole height can be generated when PSE brings an old pole configuration up to current standards, or when jurisdictional requirements require location changes that result in a change in pole configuration.)

**Concealment**

1) PSE does not allow painting of steel poles (exceptions may be granted to street light only poles).
2) Experience has shown that efforts directed towards concealment and aesthetics are often based on the personal taste and sensibilities of individuals, with an inherently wide range in variability. A design configuration that works well in one instance may not work in another (or at least not be seen as effective). This will also occasionally result in sites that have an effect opposite of what was originally intended.

## Michael Bergstrom

**From:** "Stacy Clauson" <SClauson@ci.kirkland.wa.us>
**To:** "Michael Bergstrom" <bergstrommike@msn.com>; "Nancy Cox" <NCox@ci.kirkland.wa.us>; "Susan Greene" <SGreene@ci.kirkland.wa.us>
**Sent:** Thursday, August 25, 2005 2:16 PM
**Subject:** RE: Amendments to Chapter 117 - Wireless

Ok, here goes:

- Definitions.
  - Is the section moving to Chapter 5 KZC?
  - Include the following in the definition of antenna height: For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater.
- KZC 117.20 - Recommend the following changes to existing facilities: All ~~personal wireless service facilities~~ PWSF, including without limitation antennas and towers, shall be allowed to continue their usage as they presently exist as of the effective date of this Chapter. Routine maintenance, replacement or reconfiguration of ~~antennas~~ PWSF components such as antennas or equipment structures shall be permitted on such existing antennas and towers. However, any replacement or reconfiguration that increases the height or number of antennas, the size or number of equipment structures ~~height~~ or results in the replacement of an existing tower, shall be treated like a new facility, except as approved as a minor modification under the provisions established in KZC 117.110.
- KZC 117.45.
  - Planning Official Decision.
    - Separate Water Tanks into a separate request with the following additional requirements.

      Attachment of antennas to existing ~~structures~~ water tanks

      i) Only omni-directional antennas may be placed on top of, or extend above the roofline of, a water tank;

      ii. Maximum antenna height of 15 feet for whip antennas and 10 feet for other omni-directional antennas

      iii. ~~otherwise,~~ Other facilities, such as panel antennas, may be mounted on one or more facades of the water tank but may not project above the roofline of the water tank to which they are attached;
      - Include a provision for new equipment structures.
      - Continue to use antenna height reference under provisions for utility pole.
- KZC 117.50 - delete reference to Planning Official determining if proposal is substantially compliant with the provisions of Chapter.
- KZC 117.70
  - Antenna Height for Towers. This may not adequately address how to measure height for all of the potential things that fall under the definition of tower (e.g. utility poles that exceed height limits, etc.). See definition of tower for more information.
  - Antennas on a Utility Pole. Does not address non-residential zone information.

Is everyone OK with setbacks for ground-mounted equipments? Jon and I played around with these a little and they changes were picked up in this draft. Can you look and make sure we are comfortable with this?

Stacy Clauson
Planner
City of Kirkland
Planning and Community Development
123 Fifth Avenue
Kirkland, WA 98033
425-587-3248

EXHIBIT 4
FILE NO. IK-03-13

sclauson@ci.kirkland.wa.us

**From:** Michael Bergstrom [mailto:bergstrommike@msn.com]
**Sent:** Thursday, August 25, 2005 1:54 PM
**To:** Nancy Cox; Susan Greene; Stacy Clauson
**Subject:** Re: Amendments to Chapter 117 - Wireless

Stacy - Whatever observations and comments might be, now is the time to make them. It's possible that some things were missed.

----- Original Message -----
**From:** Stacy Clauson
**To:** Nancy Cox ; Susan Greene ; Michael Bergstrom
**Sent:** Thursday, August 25, 2005 1:39 PM
**Subject:** RE: Amendments to Chapter 117 - Wireless

I think one issue that is not covered well is the addition of new equipment structures (for example, emergency generators for an existing facility, where the generator would be new). If the new equipment structures would comply with what we would normally allow for an administrative decision, it makes sense either to permit it (with no review required, except building permit), review it as a modification (if possible) or review it as an administrative decision, not a Process IIA.

I have started to look through this draft and there are some suggested changes that were not incorporated. Please let me know if you would like to review those. Thanks,

Stacy Clauson
Planner
City of Kirkland
Planning and Community Development
123 Fifth Avenue
Kirkland, WA 98033
425-587-3248
sclauson@ci.kirkland.wa.us

-----Original Message-----
From: Nancy Cox
Sent: Thursday, August 25, 2005 1:15 PM
To: Susan Greene; Stacy Clauson; 'Michael Bergstrom'
Subject: RE: Amendments to Chapter 117 - Wireless

I believe that if there is no increase in size, the replacement of an equipment structure in a non-residential zone would only require a building permit (117.20.2). Otherwise it looks like the process is IIA (117.45.3). Do we agree?

We do not mention GPS like Susan says. Should we?

Nancy Cox
Development Review Manager
City of Kirkland Planning Department

(425) 587-3228

-----Original Message-----
From: Susan Greene
Sent: Monday, August 22, 2005 8:50 AM
To: Nancy Cox
Cc: Stacy Clauson; Tony Leavitt
Subject: RE: Amendments to Chapter 117 - Wireless

Hi Nancy,
I just got a chance to glance at the new regs for wireless. I have a few comments:
It is still unclear to me what process an applicant would go through for replacement of equipment structures in a commercial zone and what the threshold is for size in determining the process they will go through.
Also, I do not see mention of GPS antennas which are (I guess) equipment that is associated with cell antennas. I just completed an administrative report with a GPS antenna that was part of the equipment for new omni antennas.

Susan

-----Original Message-----
From: Nancy Cox
Sent: Tue 8/9/2005 1:41 PM
To: Planning
Cc: 'Michael Bergstrom'
Subject: Amendments to Chapter 117 - Wireless

Mike has completed a draft of the Wireless amendments in preparation for a joint hearing on August 29. The hearing is in front of Eric and Houghton because the City Council determined that this project did not need to go on the Planning Commission's work program. The file number is ZON03-00002 or IV-03-13. Copies of the draft ordinance (attached) will be in the file - one clean version showing no underlines and strikeouts, and one with underlines and strikeouts for easy comparison with the existing chapter.

Since we do not expect a lot of interest from the public I will not set up a special file at the counter with the other long range projects but if someone wants one just let me know. The draft is being sent out to some industry reps now.

Jon, Stacy and I have worked with Mike extensively on this draft, so if there are any questions please let us know. We can schedule an in-service either before or after the joint hearing or the Council meeting. Please let me know when it would be most useful to you.

Nancy Cox

Development Review Manager

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# MEMORANDUM

**To:** Eric Shields, Planning Director
Houghton Community Council

**From:** Michael Bergstrom, Consultant

**Date:** August 19, 2005

**Subject:** Chapter 117 KZC – Personal Wireless Service Facilities Regulations, File No. IV-03-13

## I. RECOMMENDATION

Conduct a public hearing and make a recommendation to the City Council.

## II. BACKGROUND

Enclosed for your review is a draft ordinance that would replace Chapter 117 KZC – Personal Wireless Services Facilities (see Attachment 1). Chapter 117 has guided the siting of PWSF since 1998, and has not been amended during that time. Over the years, it has become apparent that Chapter 117 could be improved in many respects. Better chapter organization, improved clarity, greater flexibility with respect to screening and concealment measures, and remedies for recurring issues and problems were identified as primary targets for improvement.

This memo provides an overview of the proposed changes, and identifies the larger policy issues involved with some of the amendments. In general, the proposed ordinance maintains the existing policies of encouraging co-location of facilities and discouraging new towers, particularly in residential zones. It also maintains a hierarchical approach to the review of PWSF applications, whereby more complex or potentially more impactful applications are reviewed through a more stringent process.

## III. SUMMARY OF PROPOSED CHANGES

The following is a section-by-section summary of proposed changes. Throughout the draft ordinance, there are minor language and format changes which are not itemized below. Some of the changes reflect codification of Interpretation No. 98-2 addressing setbacks for ground-mounted equipment structures (see Attachment 2).

Table of Contents

- Revised to reflect new sections that have been added, as well as Chapter reorganization.

117.05 – User Guide *(new section)*

- New section, similar to sections appearing in other KZC chapters.

117.10 – Policy Statement
- Added goal to prioritize PWSF on existing structures, particularly on public property.

117.15 – Definitions
- Clarification that zones include adjacent rights-of-way.
- New definition of "replacement structure".
- "Tower" definition expanded to include replacement of utility poles beyond a certain size.
- New definition of "utility pole".

117.20 – Applicability *(was "New and Existing Facilities")*
- Clarifies that new equipment structures are considered "new facilities".
- Clarifies that replacement of equipment structures within certain limitations are considered "existing facilities".
- "Satellite radio" added to list of items covered by this Chapter.

117.25 – Exemptions *(new section)*
- New section, identifying exemptions to the provisions of this Chapter.

117.30 – Prohibited Devices *(new section)*
- New section, prohibiting transportable PWSF ("cell on wheels") devices.

117.35 – Permit Required
- Clarifies that permit requirements extend to all private and public land and rights-of-way.

117.40 – Co-Location Encouraged
- Minor change to section title.

117.45 – Application Review Process *(was "Priority of Locations")*
- Changes "Administrative" decisions to "Planning Official" decisions.
- Clarifies distinctions for determining what requests are reviewed through what process.
- Clarifies that only omni-directional antennas may be placed on top of, or extend beyond, a roofline.
- Allows antennas to be attached to existing or replacement water tanks or utility poles in any zone, not just residential zones, through Planning Official Decision.
- Removes 5% (for residential) and 10% (for nonresidential) roof and building façade coverage limitation on PWSF and related screening through Planning Official Decision. In conjunction with changes to 117.70 that reduce potential roof coverage from 25% to 10%, there would be a 10% across-the-board limit on roof coverage.
- In response to correspondence from Puget Sound Energy and Qwest (see Attachments 3 and 4), establishes new antenna clearance allowances above electrical service lines (current allowance is 10 feet). If in a residential zone, new allowance would be 15 feet. If in a nonresidential zone, new allowance would be 15 feet above an electrical distribution conductor and 21 feet above an electrical transmission conductor. Approvable through Planning Official Decision.
- Allows a replacement utility pole to exceed the diameter of the original pole by no more than 50%, or resulting diameter of 16 inches, whichever is less, through a Planning Official Decision, or no more than 100%/24 inches through a Process I Permit. Larger replacements would require either Process IIA or IIB approval.
- Clarifies setbacks for new PWSF.

- Allows co-location of antennas on towers in residential zone through Process I Permit.
- Allows review of any PWSF that will be located in a nonresidential zone, which does not qualify for review through Planning Official Decision or Process I Permit, to be reviewed through Process IIA. This would apply to new towers in nonresidential zones.
- Requires review of any PWSF that will be located in a residential zone, which does not qualify for review through Planning Official Decision or Process I Permit, to be reviewed through Process IIB. This would apply to new towers in residential zones.
- Clarifies that requests for modification of Chapter standards will be reviewed through Process IIB, and clarifies what may not be modified through that Process.

117.50 – Pre-Submittal Meeting *(new section)*
- Adds requirement for pre-submittal meeting before an application can be processed, similar to requirement in other Chapters. Requirement can be waived by Planning Official.

117.55 – Application Requirements
- Removes itemized list of permit application requirements. Defers to forms provided by the Planning Department.

117.60 – Determination of Application Completeness *(new section)*
- Requires that an application must be determined to be complete prior to processing, similar to requirements in other Chapters.

117.65 – Third Party Review
- Minor wording changes only.

117.70 – PWSF Standards *(was "Design Standards")*
- Section reorganized to separate standards applicable to equipment structures from standards applicable to other PWSF, for purposes of clarity ("Equipment Structure Standards" now contained in 117.75).
- Emphasizes that location and design of PWSF should reflect the context of its setting, including the streetscape.
- Presents typical means of "concealment technology", allowing the City to require or approve alternative means to more appropriately reflect site context.
- Prioritizes the routing of cable or conduit through the inside of the support structure, while providing for the option to place it on the outside of the structure.
- Clarifies that the manner of concealment for PWSF reviewed through Process IIA or IIB will be determined as part of that process.
- Clarifies setback requirements for towers and replacement structures on private properties.
- Clarifies how antenna height is measured.
- Establishes maximum antenna height on utility poles in residential zones.
- Clarifies height allowances for antennas on a building, mechanical equipment enclosure, or water tank.

117.75 – Equipment Structure Standards *(formerly combined with PWSF standards in "Design Standards")*
- Aggregates standards for equipment structures in one section.
- Clarifies what is included in the measurement of "maximum size in residential zones".
- Clarifies that equipment structures contained in a building that otherwise meets the dimensional regulations of the underlying zone are not subject to the size restrictions.
- Establishes new 30-inch height limitation for ground-mounted equipment structures located in the right-of-way.

- Establishes standards for equipment structures located on utility poles.
- Clarifies setback requirements for equipment structures located on private property.
- Presents means for concealment of equipment structures, allowing the City to require or approve alternative means to more appropriately reflect site context.
- Clarifies that installation and operation of equipment structures must comply with City-adopted noise standards.

117.80 – Screening *(was "Landscaping/Buffering")*
- Provides optional measures for screening of PWSF.
- Clarifies that buffering is not required for PWSF that is located in the public right-of-way and that is subject to review as a Planning Official decision.
- Places limitations on height of fences used to screen ground-mounted PWSF.
- Clarifies that screening is to be maintained in good condition.
- Clarifies that the manner of screening for any PWSF reviewed through Process IIA or IIB shall be determined through that process.

117.85 – Modification of Chapter Provisions *(was "Modifications")*
- Establishes that the 15-foot limit for antennas above utility poles or electrical lines in residential zones cannot be modified through Process IIB.
- Removes the 20-foot minimum distance requirement for a ground-mounted PWSF and any property line adjacent to or across the street from a residential use or zone.

117.90 – Non-Use/Abandonment
- Removes requirement for annual report confirming that the PWSF is still in use.

117.95 – Removal From City Property – When Required *(new section)*
- Establishes that PWSF mounted to any City-owned property or structure shall be removed at no expense to the City, if the City determines removal is necessary for certain undergrounding or development activities.

117.100 – Appeals and Judicial Review *(was "Appeals")*
- Establishes appeal process for Planning Official decisions.
- Expands section to address Judicial Review, in addition to Appeals.

117.105 – Lapse of Approval *(new section)*.
- New section, similar to sections appearing in other KZC chapters.

117.110 – Complete Compliance Required *(new section)*
- New section, similar to sections appearing in other KZC chapters.
- Establishes provisions for subsequent modification to approved PWSF.

117.115 – Time Limit *(new section)*
- New section, similar to sections appearing in other KZC chapters.

117.120 – Compliance With Other City Codes *(new section)*
- New section, similar to sections appearing in other KZC chapters.

117.125 – Conflict
- Minor wording changes only.

117.130 – Violations and City Remedies

- No changes.

IV. POLICY ISSUES

Although many of the proposed revisions reflect restructuring and clarifications, there are certain policy issues involved that should be recognized and considered. Included are the following:

1. Tower definition, and limitations on utility pole replacement size increase. The proposal would limit the allowable size increase for replacement utility poles to either 50% of the original diameter, or 16 inches, whichever is less, in residential zones, and to either 100% of the original diameter, or 24 inches, whichever is less in nonresidential zones. Any proposal for a greater increase would be reviewed through Process IIA or IIB, depending on zone, and would be considered a "tower". Are these thresholds appropriate? The purpose of this provision is to limit the change in scale that can result with pole replacement, or at least subject more substantial changes to more rigorous review. (Ref: 117.15.13, 117.45.1.c.iv, 117.45.2.b.i).

2. Utility pole definition. This new definition encompasses many types of poles, including some that an average person might not consider to be a "utility" pole (e.g., flagpole). Is the definition broad enough? Too broad? The purpose of this provision is to encourage the location of antenna on existing poles versus installing new poles. (Ref: 117.15.14, 117.45.1.c, 117.45.2.b, 117.70.6, 117.75.8.e, 117.85.2).

3. Prohibited devices. The proposal would prohibit "cell-on-wheels" devices, or other devices that are not permanently affixed. Is this appropriate? (Ref: 117.30).

4. Allowable roof/building façade coverage. The proposal would raise allowable roof coverage to 10% in residential zones through a Planning Official decision, and would eliminate the building façade coverage restriction. This change would be in conjunction with a reduction of the maximum possible roof coverage from 25% to 10%. Is this an appropriate change? The purpose of this amendment is simplification. (Ref: 117.45.1.b.iii, 117.45.2, 117.70.7.g).

5. Antenna height above utility poles and power lines. Current code restricts PWSF antennas to 10 feet above utility poles and power lines. The proposal would increase this to (a) 15 feet above utility poles in all zones, (b) 15 feet above all power lines in residential zones, and (c) 15 feet above electrical distribution conductor and 21 feet above electrical transmission conductor in nonresidential zones. Is this a reasonable increase? The purpose of this amendment is to achieve general consistency with clearance standards observed by Puget Sound Energy. (Ref: 117.45.1.c.ii and iii, 117.45.e.b.ii, 117.85).

6. Review of certain PWSF through Process IIA. The current code does not provide for the review of any PWSF through Process IIA. The proposal would allow certain PWSF (basically, "towers" in nonresidential zones) to be reviewed through Process IIA instead of Process IIB. Does Process IIA provide sufficient review for these PWSF? If adopted as proposed, a related amendment to the application fee schedule provisions of the Municipal Code would be required as there currently is no fee established for PWSF proposals reviewed through Process IIA. The purpose of this amendment is to reduce process in instances where a lesser process provides sufficient review. (Ref: 117.45.3).

7. Concealment and buffering/screening standards. Various proposed provisions give the City the flexibility through the appropriate review process to approve or require alternative

concealment, screening, or buffering measures. Should the City have this authority? Or should these issues be addressed through more prescriptive measures? The purpose of these provisions are to ensure that the final appearance of PWSF fits within the site context. (Ref: 117.70.1, 117.70.2, 117.70.3, 117.75.7, 117.75.8, 117.80.3, 117.80.6).

8. Routing of cables. Proposed Section 117.70.3.d prioritizes the routing of cables through the interior of the support structure, rather than on the exterior, though it does provide for exceptions. Interior routing tends to result in a greater pole diameter, but with less visual clutter. Exterior routing tends to result in a slimmer pole profile, but with more visible infrastructure. The proposal favors the former over the latter. Is this appropriate? The goal is to achieve the most aesthetically pleasing result feasible. (Ref: 117.70.3.d).

9 Height of ground-mounted equipment structures in right-of-way. The proposal would limit such structures to 30 inches in height. Alternatives would be to mount the equipment on poles (subject to restrictions) or on adjacent private property (subject to setback limitations). Should the City restrict the size of these structures when located on City right-of-way? If so, is the 30 inch limit appropriate? The purpose of this amendment is to minimize visual clutter within the right-of-way, particularly at ground level, as well as minimize impediments to pedestrian/vehicular traffic movement and visibility. (Ref: 117.75.3).

10. Buffering of PWSF in right-of-way. The proposal specifically excludes PWSF that is subject to review as a Planning Official Decision from buffering requirements. Is this appropriate? The rationale behind this amendment is that the buffering requirements often transform a relatively small feature into a very large one, consuming several times the physical space of the feature itself. The amendment further reflects that Planning Official Decisions should be reserved for straight-forward requests. (Ref: 117.80.3).

11. Appeals. The proposed language in 117.100 changes the emphasis from “any affected party” to “the applicant”. Is this appropriate? Should a neighbor or affected property owner have the same right to appeal as an applicant? (Ref: 117.100.1).

Other issues should be added to this list and discussed as you deem appropriate.

## V. CONCLUSION

The information presented above gives you an overview of the changes and policy issues embodied in the proposed ordinance. There are many more details contained in Attachment 1 that warrant your attention. You may believe that some of these details rise to the level of policy issues, in which case they should be addressed more fully at the public hearing.

We look forward to discussing the proposed ordinance with you on August 29.

## VI. ATTACHMENTS

1. Proposed Ordinance – August 5, 2005 Draft
2. Interpretation No. 98-2
3. May 23, 2002 Letter from PSE
4. July 19, 2001 Letter from Qwest
5. Environmental Documents

**DRAFT 08/05/05**

# Chapter 117 - PERSONAL WIRELESS SERVICE FACILITIES

*NOTE: This view of the draft ordinance displays the proposed text changes between the existing Chapter 117 KZC and the proposed ordinance. Existing text that would be deleted is marked with a strike-through (~~this is an example~~) and new proposed wording is highlighted by an underline (this is an example), subject to further revision resulting from the public review process.*

Sections:


117.05 User Guide
117.10 Policy Statement
117.~~05~~ 15 Definitions
117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability
~~117.65 Other Wireless Communications Facilities~~
117.25 Exemptions
117.30 Prohibited Devices
117.~~55~~ 35 Permit Required~~ment~~
117.~~25~~ 40 Co-Location Encouraged
117.~~20~~ 45 ~~Priority of Locations~~ Application Review Process
117.50 Pre-Submittal Meeting
117.~~45~~ 55 Application Requirements
117.60 Determination of Application Completeness
117.~~50~~ 65 Third Party Review
117.~~30~~ 70 ~~Design~~ PWSF Standards
117.75 Equipment Structure Standards
117.~~35~~ 80 ~~Landscaping/Buffering~~ Screening
117.~~70~~ 85 Modification~~s~~ of Chapter Provisions
117.~~40~~ 90 Non-Use/Abandonment
117.95 Removal From City Property - When Required
117.~~75~~ 100 Appeals and Judicial Review
117.105 Lapse of Approval
117.110 Complete Compliance Required
117.115 Time Limit
117.120 Compliance With Other City Codes
117.~~80~~ 125 Conflict
117.~~60~~ 130 Violations and City Remedies


## 117.05 User Guide

This Chapter establishes the conditions under which Personal Wireless Service Facilities (PWSF) may locate and operate in different areas of the city. The provisions of this Chapter add to and in some cases supersede the other regulations of this code. If you wish to install, operate, or alter PWSF in Kirkland, you should read the provisions of this Chapter.

## 117.10 Policy Statement

~~The City has received requests to site towers and antennas.~~ The purpose of this Chapter is to provide specific regulations for the placement, construction, modification and removal of ~~personal wireless service facilities~~ PWSF. Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 332(c)(7), the provisions of this Chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent personal wireless services.

1. The goals of this Chapter are to:

~~(i)~~ a. ~~e~~Encourage the location of towers in nonresidential areas and to minimize the total number of tall towers throughout the City,

~~(ii)~~ b. ~~e~~Encourage the joint use of existing tower sites,

~~(iii)~~ c. ~~e~~Encourage users of towers and antennas to locate them, to the extent possible, in areas where the impact on the City is minimal,

~~(iv)~~ d. ~~e~~Encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas,

~~(v)~~ e. ~~s~~Strongly encourage the providers of personal wireless services to use concealment technology,

~~(vi)~~ f. ~~p~~Provide standards for the siting of ~~personal wireless service facilities~~ PWSF and other wireless communications facilities (such as television and AM/FM radio towers), and

~~(vii)~~g. ~~f~~Facilitate the ability of the providers of personal wireless services to provide such services throughout the City quickly, effectively and efficiently.

h. Prioritize the location of PWSF on existing structures such as ball field lights, transmission towers, utility poles or similar structures, particularly when located on public property.

2. Accordingly, the City Council finds that the promulgation of this Chapter is warranted and necessary to:

~~1~~ a. ~~To~~ ~~m~~Manage the location of towers and antennas in the City;

~~2~~ b. ~~To~~ pProtect residential areas and other land uses from potential adverse impacts of towers and antennas;

~~3~~ c. ~~To~~ ~~m~~Minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;

4 d. ~~To~~ ~~a~~Accommodate the growing need for towers and antennas;

~~5~~ e. ~~To~~ ~~p~~Promote and encourage shared use and co-location on existing towers as a desirable option rather than construction of additional single-use towers; and

~~6~~ f. ~~To~~ ~~a~~Avoid potential damage to adjacent properties through engineering and proper siting of ~~personal wireless service facilities~~ PWSF.

117.~~05~~ 15 Definitions

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below:

1. "Antenna" shall mean any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole,

light standard, building or other structure for the purpose of providing personal wireless services and its attendant base station. Types of antennas include:

a. An "omni-directional antenna" receives and transmits radio frequency signals in a 360-degree radial pattern. ~~For the purposes of this chapter, a~~

b. A "whip antenna" is an omni-directional antenna that is up to 15 feet in height and up to four inches in diameter.

~~b.~~ c. A "directional or panel antenna" receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.

2. "Antenna height" shall mean the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. ~~Measurement of antenna height shall include the base pad, support structure, antenna, lightning rods, and other appurtenances.~~

3. "Cell site" shall mean a tract or parcel of land or building that contains the ~~personal wireless service facilities~~ PWSF including any antenna, antenna support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

4. "Co-location" shall mean the use or placement of PWSF ~~a common personal wireless service facility or~~ on a tower by two or more personal wireless service providers or by one personal wireless service provider for more than one type of communication technology.

5. "Equipment structure" shall mean a facility, shelter, cabinet or vault used to house and protect the electronic equipment necessary for processing wireless communications signals. Associated equipment may include, for example, air conditioning, backup power supplies and emergency generators.

6. "Existing structure" shall mean, but is not limited to, a building, ~~electrical transmission tower, flagpole, light standard,~~ utility pole, water tank, and structures accessory ~~structures~~ thereto.

7. "FAA" shall mean the Federal Aviation Administration.

8. "FCC" shall mean the Federal Communications Commission.

9. "Nonresidential" or "nonresidential zone" shall mean (1) all portions of the City (including rights-of-way adjacent thereto, measured to the centerline of the right-of-way) in an area not zoned residential as defined in this Chapter, or (2) the I-405 or SR 520 right-of-way.

10. "Personal wireless services" and "personal wireless service facilities" (PWSF), as used in this Chapter, shall be defined in the same manner as in Title 47, United States Code, Chapter 5, Subchapter III, Part I, Section 332(c)(7)(C), as they may be amended now or in the future.

11. "Replacement structure" shall mean a structure that replaces or is intended to replace an existing structure of a similar design and similar primary purpose, to enable the installation of new or additional PWSF on that structure. If a "replacement structure" meets the definition of "tower", it shall be considered for the purpose of regulation to be a "tower".

~~11~~ 12. "Residential" shall mean portions of the City in the following zones: RS 35; RSX 35; RS 12.5; RSX 12.5; RS 8.5; RSX 8.5; RS 7.2; RSX 7.2; RS 5.0; RSX 5.0; RM 5.0; RM 3.6; RM 2.4; RM 1.8; WD I; WD II; WD III; PLA 1; PLA 2; PLA 5A, D, E; PLA 6A, C, D, E, F, H, I, J, K; PLA 7A, B, C; PLA 9; PLA 15B; PLA 16; PLA 17; and P; and rights-of-way adjacent thereto, measured to the centerline of the right-of-way.

~~12~~ 13. "Tower" shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including any antenna support structure, self-supporting lattice towers or monopole towers~~, and does not include utility poles~~, "Tower" shall include the replacement of a utility pole if the replacement pole (a) is in a residential zone and will have a diameter more than 50% greater than the pole it replaces or a diameter greater than 16 inches; (b) is in a nonresidential zone and will have a diameter more than 100% greater than the pole it replaces or a diameter greater than 24 inches; (c) will be more than 15' taller than the pole it replaces in any zone; and/or (d) results in a structure that is designed and used primarily for the support of one or more antennas and secondarily for the support of the utility or utilities supported by the utility pole being replaced.

14. "Utility pole" shall mean a structure designed and used primarily for the support of electrical transmission or distribution wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, pedestrian paths, or ballfields, and includes flagpoles.

117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability

1. New Facilities - All new ~~personal wireless service facilities~~ PWSF, including without limitation antennas and towers, new equipment structures (including new equipment structures associated with PWSF mounted on existing structures), and replacement or reinforcement of personal wireless service antennas and towers, shall comply with this Chapter unless the applicant had a vested application to site a ~~personal wireless service facility~~ PWSF under a prior version of this code, or unless specifically exempted by KZC 117.25.

2. Existing Facilities - All ~~personal wireless service facilities~~ PWSF, including without limitation antennas and towers, shall be allowed to continue their usage as they presently exist as of the effective date of this Chapter. Routine maintenance and reconfiguration of ~~antennas~~ PWSF components, including the replacement of equipment structures where there is no increase in size, shall be permitted on such existing antennas and towers. However, any reconfiguration that increases the height or number of antennas ~~height~~ or results in the replacement of an existing tower, shall be treated like a new facility.

3. ~~117.65~~ Other Wireless Communication Facilities - All of the provisions of this Chapter, which address personal wireless services and ~~personal wireless service facilities~~ PWSF, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television, satellite radio, and AM/FM radio towers) to the maximum extent allowed by law.

117.25 Exemptions

The following are exempt from the provisions of this Chapter and shall be permitted in all zones, subject to any other applicable provisions of this Code:

1. Temporary PWSF during an emergency declared by the City.

2. Licensed amateur (ham) radio stations.

3. Satellite dish antennas less than two meters in diameter when located in non-residential zones, and satellite dish antennas less than one meter in diameter when located in residential zones, including direct to home satellite services, when used as an accessory use of the property.

117.30 Prohibited Devices

Except as exempted pursuant to KZC 117.25, PWSF that are not permanently affixed to a support structure and which are capable of being moved from location to location (e.g., "Cell on Wheels") are prohibited.

117.~~55~~ 35 Permit ~~Requirement~~ Required

In all instances, a permit must be obtained from the City before any ~~personal wireless service facilities~~ PWSF may be constructed on any public or private land or right-of-way, including I-405, SR 520, and the Burlington Northern Railroad right-of-way, within the City limits.

117.~~25~~ 40 Co-Location Encouraged

To minimize potential adverse visual impacts associated with towers, co-location of antennas by more than one provider on personal wireless service towers shall take precedence over the construction of new personal wireless service towers. Providers are encouraged, by the opportunity for expedited review as provided in this Chapter, to co-locate antennas onto personal wireless service towers. Unless the applicant has shown by substantial evidence that it has made a good faith effort to mount the antenna on an existing personal wireless service tower, the City may deny the application to construct a new personal wireless service tower.

117.~~20~~ 45 ~~Priority of Locations~~ Application Review Process

~~1.~~ An application to site a ~~personal wireless service facility~~ PWSF shall be ~~subject~~ processed according to the ~~criteria contained in the~~ table below. An application shall not be accepted for review unless the applicant has first satisfied the pre-submittal meeting requirements established by KZC 117.50. For additional requirements pertaining to PWSF, equipment structures, and screening, see KZC 117.70., 117.75, and 117.80. ~~Only when the application does not meet a criteria shall the next group of criteria be considered. The hierarchy of criteria is divided into three separate approval processes: administrative decision, Process I permit and Process IIB permit. The order of criteria for locating personal wireless service facilities shall be as follows~~:

| Review Process | Request | Additional Requirements |
|---|---|---|
| 1. ~~Administrative~~ Planning Official Decision | ~~1~~a) Co-location of antennas on existing personal wireless service towers in nonresidential zones. | |
| | ~~2~~b) Attachment of antennas to existing ~~structures~~ (but not replacement) buildings or mechanical equipment enclosures in nonresidential zones. | i. Only omni-directional antennas may be placed on top of, or extend above the roofline of, a building or mechanical equipment enclosure;<br>ii. Antenna Height: ~~w~~Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional |

| | | |
|---|---|---|
| | | antennas may exceed the structure height by a maximum of 10 feet;<br>iii. ~~otherwise,~~ Other facilities, such as panels, may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure, but may not project above the roofline of the structure to which they are attached; and ~~all appurtenances and screening (including personal wireless service facilities) may not exceed 5% of the total roof area of a building and/or 5% of any façade of a building.~~ |
| | ~~3) Equipment structures may not exceed 500 cubic feet with a 5-foot height limit in residential zones.~~ | |
| | 4c) Antennas ~~may~~ to be attached to existing or replacement ~~ball field light standards, electrical transmission towers,~~ water tanks or ~~existing~~ utility poles in ~~residential zones~~ any zone. | i. Antenna Height: If located on a water tank, or on a utility pole that is not used to convey electrical service, ~~W~~whip antennas may exceed the original structure height prior to replacement by a maximum of 15 feet and other antennas may exceed the structure height by a maximum of 10 feet.<br>ii. If in a residential zone, antennas attached to utility poles used to convey electrical service may extend no higher than 15 feet above the electrical distribution or transmission conductor.<br>iii. If in a non-residential zone, antennas attached to utility poles used to convey electrical service may extend no higher than 15 feet above an electrical distribution conductor, or 21 feet above an electrical transmission conductor.<br>iv. A replacement structure that will replace an existing utility pole may not exceed the diameter of the existing pole by more than 50%, and in no case shall exceed a diameter of 16 inches. |
| 2. Process I Permit | ~~1~~a) New personal wireless service towers and associated equipment in nonresidential zones. | i. Must be located at least a distance equal to 100% of antenna height from any property line adjacent to or across the street from a residential use or residential zone, and in no case less than 10 feet from any property line. See KZC 117.70.4.<br>ii. Maximum allowable antenna height is ~~a maximum of~~ 40 feet. |
| | ~~2 Attachment of antennas to existing structures in nonresidential zones:~~ | |

| | | |
|---|---|---|
| | • ~~Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>• ~~Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>• ~~All appurtenances and screening (including personal wireless service facilities) may not exceed 10% of the total roof area of a building and/or 10% of any façade of a building.~~<br>----------<br>b) Antennas to be attached to existing or replacement water tanks or utility poles in any zone.<br>----------<br>c) Co-location of antennas on personal wireless service towers in a residential zone. | ----------<br>i. A replacement structure that will replace an existing utility pole may not exceed the diameter of the existing pole by more than 100%, and in no case shall not exceed a diameter of 24 inches.<br>----------<br>i. May include ancillary equipment structures.<br>ii. May include structural alterations to the personal wireless service tower.<br>iii. Applicant shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available.<br>iv. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site.<br>v. The co-location shall not result in any height increase to the tower. |
| 3. Process IIA Permit | a) Any PWSF that is in a nonresidential zone and is unable to meet the criteria for review as a Planning Official decision or Process I permit. | i. The personal wireless services provider is required to demonstrate that it contacted the landowners or owners of structures taller than 30 feet within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied.<br>ii. The information submitted by the applicant |

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| | | shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site. |
| ~~3~~ 4. Process IIB Permit | ~~1~~a) Any ~~personal wireless service facility~~ PWSF that is unable to meet the ~~preceding priority of locational~~ criteria for review as ~~an administrative~~ a Planning Official decision, ~~or~~ Process I permit, or Process IIA permit~~;~~ ~~see also KZC 117.70~~.<br>----------<br>b) Modification of standards contained in this Chapter, per KZC 117.85. | i. An applicant for a new facility to be located in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available.<br>ii. The personal wireless services provider is required to demonstrate that it contacted the landowners or owners of structures ~~in excess of~~ taller than 30 feet within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied.<br>iii. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site.<br>iv. Tower height within a residential zone shall not exceed 40'.<br>----------<br>The following may not be modified:<br>i. The 40-foot height limit for PWSF in residential zones.<br>ii. The 15-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones. |

~~2. Further Process IIB Permit Requirement –~~ *(incorporated into 117.45.4 – above chart)*

117.50 Pre-Submittal Meeting

Before an application requiring review through Planning Official Decision, Process I, Process IIA, or Process IIB will be accepted for processing, the applicant shall attend a pre-submittal meeting with the Planning Official, as required by KZC 145.12, 150.12, or 152.12; provided, that the Planning Official may waive the pre-submittal meeting requirement for any proposal

that the Planning Official deems to be substantially compliant with the provisions of this Chapter.

117.~~45~~ 55 Application Requirements

In the course of reviewing any request for any approval required under this Chapter made by an applicant to install ~~personal wireless service facilities~~ PWSF, the City shall act within a reasonable period of time, taking into account the nature and scope of the request, after an application has been determined to be complete. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

All applications for ~~administrative decision, Process I and Process IIB~~ permits to locate a ~~personal wireless service facility~~ PWSF (including, but without limitation, an antenna or tower in the City) shall be made using forms provided by ~~submitted to~~ the Planning Department and shall be accompanied by the information and support materials identified on said forms. ~~with the applicable requested information (depending upon the type of facility which is involved). A detailed plan that complies with the submittal requirements of this Chapter, and other regulations and ordinances of the City, along with other pertinent information requested by the City shall also be submitted. An applicant's submission may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information depending upon the type of facility which is involved:~~

~~1. All applicants must register their request with the City on a form provided by the City at the time of building permit or right-of-way use permit application.~~

~~2. A scaled site plan clearly indicating the location, type and height of the proposed tower, antennas, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, the equipment structure, fencing, buffering and the type of concealment technology which will be utilized. The full, detailed site plan shall not be required if the antenna is to be mounted on an existing structure.~~

~~3. Photosimulations of the proposed facility from affected residential properties and public rights-of-way.~~

~~4. A current map and/or aerial photograph showing the location of the proposed tower.~~

~~5. Legal description of the parcel, if applicable.~~

~~6. Approximate distance between the proposed tower and antennas, as applicable, and the nearest residential unit, or residentially zoned properties.~~

~~7. Information of sufficient detail to demonstrate that the equipment structure is the minimum size necessary.~~

~~8. A landscape plan showing specific landscape, screening and fencing materials.~~

~~9. A notarized letter signed by the applicant stating that the personal wireless service facilities PWSF will comply with all applicable federal and state laws, including specifically FCC and FAA regulations, and all City codes.~~

~~10. A notarized letter signed by the applicant stating that the antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.~~

~~11. Manufacturers information indicating compliance with adopted noise standards.~~

~~12. The personal wireless services provider must demonstrate that it is licensed by the FCC, if required to be licensed under FCC regulations.~~

~~13. The applicant, if not the personal wireless services provider, shall submit proof of a lease agreement with an FCC-licensed personal wireless services provider if such provider is required to be licensed by the FCC.~~

~~14. Propagation maps shall be provided showing that the tower and antennas are required for present and future network coverage in order to satisfy the requirements of the provider's grid system. The maps shall also demonstrate that the height specified is the minimum height necessary for the tower and antennas, as applicable. The maps shall additionally show coverage areas at the requested height and at lower heights. Finally, they shall show the neighboring or regional facilities with which the facilities in the City can communicate.~~

~~15. If the site is within or adjacent to a residential zone, then a study shall be provided showing why alternative locations are not acceptable.~~

~~16. All providers shall submit satisfactory evidence that the facility is designed for and will provide services primarily for residents of the City and/or visitors within City limits.~~

~~17. See also KZC 117.40(2), Further Process IIB Permit Requirements, and KZC 117.55, Third Party Review.~~

117.60 Determination of Application Completeness

1. Planning Official Decisions: The Planning Official shall determine as soon as possible after receipt of an application whether the application is complete. If the application is not complete, the Planning Official shall identify and communicate the needed components to the applicant. Once the application is complete, the Planning Official shall process the application.

2. Process I, Process IIA, and Process IIB Permits: The determination of completeness for Process I, Process IIA, and Process IIB permit applications shall occur pursuant to the process set forth in Chapters 145, 150, and 152 KZC, respectively.

117.~~50~~ 65 Third Party Review

In certain instances (~~including all~~ particularly Process IIB permit applications) there may be a need for expert review by a third party of the technical data submitted by the personal wireless services provider. The City may require such a technical review, to be paid for by the applicant for the ~~personal wireless service facilities~~ PWSF. The selection of the third party expert shall be by mutual agreement between the applicant and the City, such agreement not to be unreasonably withheld by either party. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering.

The expert review is intended to be a site-specific review of technical aspects of the personal wireless services, facilities and other matters as described herein, and not a subjective review of the site selection. In particular, but without limitation, the expert shall be entitled to provide a recommendation on the height of the proposed facilities relative to the applicant's coverage objectives and system design parameters. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the City or other interested parties. Based on the results of the third party review,

the City may require changes to the application for the ~~personal wireless service facilities~~ PWSF that comply with the recommendations of the expert.

117.~~30~~ 70 ~~Design~~ PWSF Standards

1. Context - The location and design of cell sites in the City shall consider the visual and physical impact of the site on the surrounding neighborhood and shall be designed, to the extent feasible, to reflect the context within which they are located.

2. Design Compatibility - ~~Facilities~~ PWSF shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, ~~and~~ design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape to the maximum extent practical.

3. Concealment Technology. ~~- Concealment technology applies to all personal wireless service facilities, including, without limitation, antennas, towers and equipment structures. For any facility, "concealment technology" means the use of both existing and future technology through which a personal wireless service facility is designed to resemble an object which is already present in the local environment, such as a tree, streetlight, or traffic signal. It also includes:~~ Typical PWSF concealment measures are identified herein, and shall be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the PWSF:

   a. For personal wireless service towers:

      If within an existing stand of trees, ~~"concealment technology" means that~~ the tower ~~is to~~ shall be painted a dark color, ~~is~~ and be made of wood or metal.~~, and that a~~ A greenbelt easement is required to ensure permanent retention of the surrounding trees.

      ~~"Concealment technology" for t~~ Towers in a more open setting ~~means that they must~~ shall have a backdrop (for example, but not limited to, trees, a hillside, or a structure) on at least two sides, be a compatible color with the backdrop, be made of compatible materials with the backdrop, and ~~that~~ provide architectural or landscape screening ~~be provided~~ for the other two sides. If existing trees are the backdrop, then a greenbelt easement is required to ensure permanent retention of the surrounding trees.

      In all cases where a greenbelt easement is required, it shall be the minimum necessary to provide screening and may be removed at the landowner's request in the event the facility is removed.

      Antennas shall be integrated into the design of any personal wireless service tower to which they are attached. External projections from the tower shall be limited to the greatest extent technically feasible.

   b. For rooftop antennas or antennas mounted on other structures:

      ~~For o~~ Omni-directional antennas 15 feet or less above the roof~~, "concealment technology" means use~~ shall be of a color compatible with the roof, structure or background.

      ~~For o~~ Other antennas~~, "concealment technology" means~~ shall use ~~of~~ compatible colors and architectural screening or other techniques approved by the City.

Antennas shall be integrated into the design of any existing structure or support structure to which they are attached. External projections from the existing structure or support structure shall be limited to the greatest extent technically feasible.

c. ~~For a~~ Antennas mounted on one or more building facades~~: "Concealment technology" means~~ shall (a) use ~~of~~ color and materials ~~such that the facility has~~ to provide architectural compatibility with the building. ~~It shall~~ (b) be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible, and ~~shall~~ (c) not project above the wall on which it is mounted.

~~d. For equipment structures: "Concealment technology" means locating within a building, or if on top of a building, with architecturally compatible screening. An underground location, or locating above ground with a solid fence and landscaping, is also considered concealment technology.~~

d. Where feasible, cable and or conduit shall be routed through the inside of the support structure. Where this is not feasible, or where such routing would result in a support structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the support structure. The outside cable or conduit shall be the color of the support structure, and the City may require that the cable be placed in conduit.

e. Optional measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process of KZC 117.45 that the optional measures will be at least as effective in concealing the PWSF as the measures required above.

f. Nonwithstanding the above, the manner of concealment for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

4. Setbacks - ~~Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ The following regulations apply, except for structures located in public right-of-way:

a. New towers shall be setback at least one (1) foot for each one (1) foot of antenna height from any property line adjacent to or across the street from a residential use or residential zone. The street right-of-way width may be included in the setback measurement. In no case shall a new tower be located closer than ten (10) feet to any property line.

b. Replacement of existing structures to accommodate a PWSF shall be setback at least the same distance as the original structure from any property line adjacent to or across the street from a residential use or residential zone; and the lesser of ten (10) feet or the distance of the original structure from any property line adjacent to or across the street from all other uses or zones.

~~9~~ 5. Tower and Antenna Height - The applicant shall demonstrate that the tower and antenna are the minimum height required to function satisfactorily. Personal wireless service towers shall not exceed 40 feet in residential zones, as measured from the

Average Building Elevation at the tower base to the highest point of the tower, antenna, or other physical feature attached to or supported by the tower.

6. Antennas On a Utility Pole - Antennas mounted to an existing or replacement utility pole in a residential zone may not project higher than 15' above the top of the pole if the pole is not used to convey electrical service or more than 15' above the electrical distribution or transmission conductor if the pole is used to convey electrical service.

~~10~~ 7. Antennas On ~~or Above~~ a ~~Structure~~ Building, Mechanical Equipment Enclosure, or Water Tower - Antennas ~~and equipment structures on or above~~ mounted to a ~~structure~~ building, mechanical equipment enclosure, or a water tower shall be subject to the following criteria: *(standards applicable to equipment structures moved to 117.75 below)*

a. Antenna ~~and equipment structure~~ height is measured above the top of the roof, not from the parapet or from the Average Building Elevation of the building, mechanical equipment enclosure, or water tower.

b. Only omni-directional antennas may be roof-mounted, but may not be mounted on penthouse roofs. No panel or directional antennas may be mounted on roofs or project above the roofline. The "roofline" of a water tower that incorporates a curved roof shall be the point at which the vertical wall of the water tower ends and the curvature of the roof begins.

c. Whip antennas may exceed the structure height by 15 feet, and other omni-directional antennas may exceed the structure height by 10 feet.

~~c~~ d. All roof-mounted antennas must be set back from the edge of the roof a distance equal to 100 percent of antenna height.

~~d. Roof-mounted antennas and equipment structures shall be incorporated into the pitched or stepped roof form, and not appear as a separate penthouse or box.~~

e. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered.

f. Antennas may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

g. In no instance shall ~~equipment structures, antenna and related equipment~~ PWSF occupy more than ~~25~~ 10 percent of the total roof area of a building.

~~h.~~ 8. Historic or Landmark Locations - No antennas shall be permitted on property designed as a historic resource or community landmark as identified in the Comprehensive Plan, unless such antennas have been approved in accordance with design requirements pertaining to historic structures.

~~i.~~ 9. Signal Interference - No antennas shall cause localized interference with the transmission or reception of any other communications signals including, but not limited to, public safety signals, and television and radio broadcast signals.

~~j.~~ 10. Support Wires - No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by the UBC to anchor the antennas, antenna arrays or support structures.

~~5~~ 11. Views - ~~Personal wireless service facilities~~ PWSF, including towers, must be located and oriented in such a way as to minimize view blockage.

~~6~~ 12. Lights, Signals and Signs - No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.

~~7. Equipment Structures -~~ *(moved to 117.75, below).*

13. Noise – The installation and operation of PWSF shall comply with the noise standards set forth in KZC 115.95.

~~8~~ 14. Federal Requirements - All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Chapter shall bring such towers and antennas into compliance with such revised standards and regulations in accordance with the compliance deadlines and requirements of such standards and regulations. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense. Additionally, if, upon inspection, the City concludes that a tower fails to comply with such regulations and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards and regulations. If the owner fails to bring such tower into compliance within said 30 days, the City may remove such tower at the owner's expense.

~~7~~ 117.75 Equipment Structures Standards ~~- The standards for equipment structures are as follows:~~

1. Maximum Size in Residential Zones - ~~e~~Equipment structures ~~may~~ shall not exceed 500 cubic feet and shall be no greater than 5 feet in height. ~~with a 5-foot height limit in residential zones.~~ Equipment structure enclosures shall not exceed 500 square feet. These limitations shall apply to the aggregate size of all equipment structures and enclosures located on a single site, provided that equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone shall not be subject to these limitations.

~~b~~2. Maximum Size in Nonresidential Zones - Gross floor area of equipment structures shall be the minimum necessary but not greater than 240 square feet per provider. Maximum height is 10 feet above average building elevation. These limitations shall not apply to equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone.

3. Equipment Structures Located in Right-of-Way - If ground-mounted, said structures shall not exceed a height of 30 inches. If mounted on poles, said structures shall comply with 117.75.6. Setback requirements do not apply to equipment structures located in the right-of-way.

4. Setbacks When Located on Private Property –
   a. New ~~G~~ground-mounted ~~personal wireless service facilities~~ equipment structures associated with a personal wireless service tower, where the tower is located on private property, shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a

residential use or residential zone and in no case less than 10 feet from any property line~~;~~.

b. New ground-mounted equipment structures associated with antennas attached to existing buildings or water tanks shall be located ~~And~~ a minimum of 10 feet from any property line ~~adjacent to or across the street from all other uses or zones~~.

c. New ground-mounted equipment structures associated with existing or replacement structures located on public right-of-way shall be setback from any property line a distance at least equal to the height of the new equipment, provided that the equipment structure complies with the sight distance requirements of KZC 115.135.

5. Equipment structures on or above a structure - Equipment structures on or above a structure shall be subject to the following criteria:

a. ~~Antenna and e~~Equipment structure height is measured above the top of the roof, not the parapet.

~~d~~ b. When mounted to the roof of a building with a pitched or stepped roof form, R~~r~~oof-mounted ~~antennas and~~ equipment structures shall be incorporated into the ~~pitched or stepped~~ roof form, and not appear as a separate penthouse or box.

6. Equipment structures mounted on poles or towers -

a. Equipment structures may be mounted on utility poles or towers. The location and vertical clearance of such structures shall be reviewed by the Public Works Department to ensure that the structures will not pose a hazard to other users of the right-of-way.

b, Equipment structures mounted on utility poles or towers shall be located in a manner that minimizes clutter and visual impact.

~~a~~7. Compatibility - Equipment structures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.

8. Concealment - ~~For equipment structures: "Concealment technology" means~~ Typical concealment measures for equipment structures are identified herein, and shall be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment structure:

(a) ~~l~~Locating within a building or building appendage constructed in accordance with all applicable City codes, ~~or if~~

(b) Locating on top of a building, with architecturally compatible screening~~.~~ ,

(c) Locating ~~An~~ underground ~~location~~, ~~or~~

(d) ~~l~~Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.80.3, ~~is also considered concealment technology~~. or

(e) If mounted on a utility pole or tower, the equipment structure shall be of a similar color to that of the pole or tower to which it is attached, unless alternative measures are approved by the City as part of the applicable review process.

~~c~~9. Noise Standards -

a. Equipment structures shall be oriented so that exhaust ports or outlets are pointed away from properties ~~which~~ that may be impacted by noise. Equipment shall comply with noise regulations in KZC 115.95. The City may require an assessment of noise after operation begins and remediation if the noise levels created are not within the prescribed limits. Cumulative noise impacts will be measured in cases where there is more than one equipment structure.

b. The installation and operation of equipment structures shall comply with the noise standards set forth in KZC 115.95

117.~~35~~ 80 ~~Landscaping/Buffering~~ Screening

1. General - Landscaping, as described herein, shall be required to screen as much of the new personal wireless service tower as possible, the fence surrounding both the tower and any other ground level features (such as an equipment structure), and in general soften the appearance of the site. The City may allow or require ~~any other form of~~ the use of concealment technology, as described in KZC 117.70.3, either instead of or in addition to required landscaping, ~~if it~~ to achieve~~s~~ ~~the same degree of~~ effective screening ~~as the required landscaping~~. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's discretion, taking into consideration the site as built. If the antenna is mounted on an existing building, and the equipment structure is housed inside the building, landscaping shall not be required.

2. Existing Vegetation - Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance will result in less visual impact of the site on the surrounding area.

3. Buffering - Except as provided below, ~~B~~buffering of ground-mounted ~~personal wireless service facilities~~ PWSF shall be required around the perimeter of the facility. Landscape buffering shall ~~at a minimum~~ comply with the requirements of KZC 95.25~~(3)~~.3, **(((note: KZC reference may change due to Ch 95 revisions)))** except that all trees must be evergreen; provided, that the City may approve or require optional buffering measures, if the City determines that such optional measures will provide effective screening. Such optional measures include, but are not limited to, the following:
   a. Walls or solid fencing, of a height at least as high as the equipment it screens, subject to KZC 117.80.4 below;
   b. Architectural features, such as parapets, mechanical penthouses, or building fin walls.
   c. Climbing vegetation supported by a structure such as a fence or trellis, of a type and size that will provide a dense visual barrier at least as high as the equipment it screens within two years from the time of planting; or
   d. The natural topography of the site or the adjoining property or right-of-way.

   Buffering shall not be required for PWSF located in a public right-of-way and which is subject to review as a Planning Official Decision.

4. Fencing - Fencing may be allowed or required if it is needed for security purposes, or if it is part of concealment technology. The use of chain link, plastic, vinyl or wire fencing is prohibited unless it is fully screened from public view. Landscaping shall be installed on the outside of fences. Fencing installed specifically for the purpose of screening ground-mounted PWSF shall not be taller than necessary to provide appropriate screening.

5. Maintenance – The applicant shall maintain the screening in good condition and shall replace any plants required by this chapter or approved or required as part of the permit approval that are unhealthy or dead. In the event that ~~landscaping~~ screening is not maintained at the required level, the City, after giving 30 days' advance written notice to the provider, may maintain or establish the ~~landscaping~~ screening and bill both the landowner and provider for such costs until such costs are paid in full.

6. Nonwithstanding the above, the manner of screening for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

117.~~70~~ 85 Modifications of Chapter Provisions

Provisions of this Chapter shall not be subject to variances described in Chapter 120 KZC. However, through Process IIB, Chapter 152 KZC, the City may consider modification of standards in the Chapter except for:

1. The 40-foot height limit for personal wireless service ~~facilities~~ towers in residential zones; and/or

2. The 15-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones.

~~2. A 20-foot minimum distance between a ground-mounted personal wireless service facility and any property line adjacent to or across the street from a residential use or residential zone.~~

117.~~40~~ 90 Non-Use/Abandonment

1. Bond - The City may require a bond or other suitable performance security as per Chapter 175 KZC to cover the costs of removal of the antenna or tower.

~~2. Annual Report - The provider must confirm in writing to the City on an annual basis that the personal wireless service facility is still in use on a form to be provided by the City.~~

~~3~~ 2. In the event the use of any tower or antenna will be discontinued for a period of 60 consecutive days, the owner or operator shall so notify the City in writing, and the tower or antenna shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and affidavits from the tower or antenna owner or operator regarding the issue of tower or antenna usage. Upon such abandonment, the owner or operator of the tower or antenna or the owner of the property upon which such facility is located shall have an additional 60 days within which to:

a. Reactivate the use of the tower or antenna or transfer the tower or antenna to another owner or operator who makes actual use of the tower or antenna; or

b. Dismantle and remove the tower or antenna. If such tower or antenna is not removed within said 60 days from the date of abandonment, the City may remove such tower or antenna at the facility owner's and property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

At the earlier of 60 days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval of the tower or antenna shall automatically expire.

117.95 Removal From City Property - When Required

A PWSF mounted to any City-owned property, utility pole, or other structure shall be removed if the City deems removal is necessary for the undergrounding of utilities, the development or redevelopment of City-owned property, or the demolition or alteration of a City-owned building or other structure. The PWSF shall be removed at no expense to the City.

117.~~75~~ 100 Appeals and Judicial Review

~~Appeals of administrative decisions shall be processed according to the appeal procedures for Process I; except, that any affected party may appeal and participate in the appeal; the time to appeal is taken from the date of administrative decision; and distribution of the appeal hearing notice by the Planning Official shall be to the applicant, appellant, the official newspaper of the City, and posted on public notice sign(s).~~

1. An applicant may appeal a Planning Official decision to the Hearing Examiner. A written notice of appeal shall be filed with the Planning Department within fourteen (14) days of the date the Planning Official's decision was mailed or otherwise delivered to the applicant. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least seventeen (17) days prior to the hearing. The applicant shall have the burden of proving that the Planning Official made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse, or modify the decision being appealed.

2. Appeals of Process I, IIA, or IIB permits are processed, and judicial review shall occur, according to the appeal and judicial review procedures and provisions for ~~either~~ Process I, IIA, or IIB respectively.

117.105 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity or other actions approved under this Chapter within one year after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 117.100, the running of the one year is tolled for any period of time during which a court order in said judicial review proceeding prohibits the development activity or other actions. The applicant must substantially complete construction for the development or other actions approved under this Chapter and complete the applicable conditions listed on the notice of decision within two years after the final approval on the matter, or the decision becomes void. For development activity or other actions with phased construction, lapse of approval may be extended when approved under this Chapter and made a condition of the notice of decision.

117.110 Complete Compliance Required

1. General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this Chapter in order to do everything authorized by that approval.

2. Exception – Subsequent Modification – The Planning Official may approve a modification to the permit approved for the PWSF if:

   a. The modification is minor and will not substantially change the proposed facility; and

b. The proposed modification will comply with the provisions of this Chapter in effect at the time of the modification request; and

c. There will not be any substantial changes in the impacts on the neighborhood or the City as a result of the change.

Any modification, other than as specified in paragraph 2 of this Section, must be reviewed and decided upon as a new PWSF approval under this Chapter.

117.115 Time Limit

Any time limit, pursuant to Chapter 36.70B RCW, upon the City's processing and decision upon applications under this Chapter may, except as specifically otherwise stated in this Chapter, be modified by a written agreement between the applicant and Planning Director. In the event a permit constitutes or presents a special circumstance under the provisions of this Chapter, the time limits for the City to make a final decision and issue its notice of decision under Chapter 36.70B RCW are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

117.120 Compliance With Other City Codes

Compliance with the provisions of this Chapter does not constitute compliance, or remove from the applicant the obligation to comply, with other applicable provisions of this Code, the Comprehensive Plan, or any other ordinance or regulation of the City including, but not limited to, regulations governing construction or implementing the State Environmental Policy Act or the Shoreline Management Act.

117.~~80~~ 125 Conflict

Notwithstanding the requirements of Section 117.120 above, ~~To~~ to the extent that any provision or provisions of this Chapter are inconsistent or in conflict with any other provision of the Zoning Code, Comprehensive Plan or any ordinance or regulation of the City, the provisions of this Chapter shall be deemed to control. ~~Personal wireless service facilities~~ PWSF are permitted in the City pursuant to this Chapter notwithstanding the fact they are not mentioned in the use zone charts in Chapters 15 through 65 KZC.

117.~~60~~ 130 Violations and City Remedies

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Chapter 170 KZC, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this Chapter and all other remedies provided at law or in equity.

# CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (425) 828-1257

## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT MEMORANDUM

**To:** Interpretation File No. 98-2

**From:** Eric R. Shields, AICP
Planning Director

**Date:** December 18, 1998

**Subject:** KZC 117.30.4: SETBACKS FOR GROUND-MOUNTED PERSONAL WIRELESS SERVICE FACILITY EQUIPMENT STRUCTURES

Issue: What are the required setbacks for new ground-mounted personal wireless service facility equipment structures?

### INTERPRETATION

Section 117.15.1: The provisions of Chapter 117 apply to installation of new equipment structures that are associated with personal wireless service facilities mounted on existing structures.

Section 117.30.4: Setbacks from property lines adjacent to or across the street from a residential use or zone for ground-mounted equipment structures associated with personal wireless service facilities mounted on existing structures shall be equal to the vertical distance from the top of the roof or structure where the antenna is located, to the highest point of the antenna, including lightning rods or other appurtenances.

Section 117.30.4: Setbacks from property lines to or across the street from a nonresidential use or zone for ground-mounted equipment structures associated with personal wireless service facilities mounted on existing structures shall be 10 feet.

### APPLICABLE CODE SECTIONS

Section 117.15.1: New Facilities: **All new personal wireless service facilities, including without limitation antennas and towers**, and replacement of personal wireless service antennas and towers, shall comply with this Chapter unless the applicant has a vested application to site a personal wireless service facility under a prior version of this code. (emphasis added)

Section 117.30.4: Setbacks: Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.

ATTACHMENT 2

FILE NO. IV-03-13

Section 117.05.010: "Personal Wireless Services" and "Personal Wireless Service Facilities," as used in this chapter, shall be defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as they may be amended now or in the future.

Section 117.05.2: "Antenna Height" shall mean the vertical distance measured from average building elevation to the highest point of the antenna, **or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna**. Measurement of antenna height shall include the base pad, support structure, antenna, lighting rods, and other appurtenances. (emphasis added)

## ANALYSIS

KZC 170.60 states that the Planning Director may issue an interpretation of any of the provisions of the code and interpretations shall be based on:

a) The defined or common meaning of the words of the provision; and
b) The general purpose of the provision as expressed in the provision; and
c) The logical or likely meaning of the provision viewed in relation to the Comprehensive Plan.

Defined or Common Meaning of the Words

KZC 117.15.1 applies to new "personal wireless service facilities." KZC 117.30.4 applies to all ground-mounted "personal wireless service facilities." The term "personal wireless service facilities" is defined in Section 117.05.10, which references a portion of Federal regulations. Title 47, US Code, Section 332(c)(7)(C) defines the term "personal wireless service facilities" as "facilities for the provision of personal wireless services." Equipment structures are necessary facilities for the provision of personal wireless services. Therefore, KZC 117.15.1 and 117.30.4 apply to equipment structures.

KZC 117.30.4 requires certain setbacks, depending on the adjacent land use or zone. For sites adjacent to or across the street from a residential use or residential zone, a setback of "100 percent of antenna height" is required. The term "antenna height" is defined in KZC 117.05.2. Where antennas are located on existing structures (such as a building, water tank or utility pole), antenna height is imply the "vertical distance measured... from the top of the roof or structure to the highest point of the antenna." Therefore, if a 10-foot high antenna were placed on a utility pole, a 10-foot setback for the associated structure would be required.

General Purpose of the Provision

The purpose of Chapter 117 KZC is to regulate the "placement, construction, modification and removal of personal wireless service facilities" (KZC 117.10). KZC 117.15.1 indicates that new personal wireless service facilities are to be regulated based on the provisions of Chapter 117 KZC.

The purpose of the setback provision is to protect residential areas and other land uses from potential adverse impacts of towers and antennas, including visual impacts.

Meaning in Relation to the Comprehensive Plan

Policy U-1.6 states "Minimize adverse impacts on adjacent land uses through careful placement of cellular communication facilities and other above-ground utility installations. Utilize existing structures for cellular communication facilities where feasible."

Implications of This Interpretation

This interpretation clarifies equipment structure setbacks for a number of different types of personal wireless service facility installations. The following tables provide some examples of how setbacks would be applied to these different installations. A six-foot high antenna is used simply to make the chart easier to read. In those cases, the required setback is one foot of setback for each foot of antenna height. It should be noted that other provisions of Chapter 117 KZC might require greater setback if needed to mitigate noise and visual impacts.

**TABLE 1**
**SETBACK FROM PROPERTY LINE ADJACENT TO OR ACROSS STREET FROM A RESIDENTIAL ZONE OR USE FOR NEW GROUND-MOUNTED EQUIPMENT STRUCTURE**

| Facility Type | Setback for New Equipment Structure* |
|---|---|
| *Existing Utility Pole or Electrical Transmission Tower* | |
| – Top of antenna below top of pole/tower | None |
| – Top of antenna 6′ above top of pole/tower | 6′ |
| *Taller Replacement of Existing Utility Pole or Transmission Tower (for example, a 50′ pole replacing a 40′ pole in the same location)* | |
| – Top of antenna below top of pole//tower | 10′ |
| *Existing Water Tank* | |
| – Top of antenna below top of tank | None |
| – Top of antenna 6′ above top of tank | 6′ |
| *New 40′ High Personal Wireless Service Tower* | |
| – Top of antenna below top of PWS tower | 40′ |

*Setback does not apply to equipment structures located on public right-of-way.

For property lines adjacent to or across street from a nonresidential use or zone, a minimum 10-foot setback is required for ground-mounted equipment structures.

PUGET SOUND ENERGY

May 23, 2002

**RE: PSE clearance distances**

To whom it may concern,

PSE's safe working clearances are based on NESC requirements and PSE Line Work Practices. The minimum clearance distance for Distribution is 7 ft. As a general rule, PSE has established a clearance distance of 10 ft for non-power equipment above Distribution conductor. Where conditions dictate, we have reduced this distance down to 7 ft. We prefer not having to do this, as it allows for just the *minimum* safe working clearance for our crews.

The minimum safe working clearance for Transmission is 10 ft. However, this distance increases as the voltage of the line increases. Again, as a general rule, PSE has established a clearance distance of 15 ft for non-power equipment above Transmission conductor. In some instances, we have reduced this down to 10 ft.

For clearance below Distribution, the NESC has established 40 inches as the Safety Space from energized conductor. This distance is usually measured from the system neutral which is attached 7 ft. below the primary, normally at a height of 26 - 27 ft above grade.

The code is not as clear with regard to clearance below Transmission. On a transmission only pole (no distribution under build) the minimum 10 ft rule would apply. In instances where there is distribution under built, only qualified electrical workers would be permitted to access the equipment. Thus, in theory, the distance could be shortened. However, PSE has not given this issue sufficient review and defaults to the 10 ft minimum clearance distance below Transmission.

Anyone having questions regarding PSE clearances, standards and work practices may contact me at (425) 456 – 2776.

Sincerely,

Timothy M. Gasser

Timothy M. Gasser
Wireless Co-Location Project Manager

ATTACHMENT 3

FILE NO. IV-03-13

450 110th Avenue NE, Suite 209
Bellevue, WA 98004

Fax 425.451.6310

Qwest.

RECEIVED
JUL 23 2001
AM PM
PLANNING DEPARTMENT
BY

July 19, 2001

Eric R. Shields, AICP
Director, Planning & Community Development
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

RE: Code Amendment – Chapter 117

Dear ~~Mr. Shields~~ Eric:

On behalf of Qwest Wireless, I request that the City of Kirkland consider a code amendment to Chapter 117 of the Kirkland Municipal Code (KMC). Specifically, Section 117.20 of the KMC limits the extension of utility poles to 10 feet for the purposes of attaching personal wireless service facility (PWSF) antennas. As was discussed at our meeting on July 11th, Puget Sound Energy requirements are for 15 feet of clearance between the conductors on the utility pole and the toe of the PWSF antennas. This clearance can be reduced in some, but not all cases to a minimum of 10 feet.

As the current code is written all utility pole PSWF's would be subject to a Type IIB Process. Given the KMC designates the utility pole as a high priority for PWSF's, subjecting this class of PWSF to a Type IIB Process acts as a disincentive for this type of facility. A more realistic standard for this type of PWSF would be to allow the extension of utility poles the minimum distance needed to achieve necessary safety clearances from utility lines as determined by the appropriate utility. In the case of PSE, this would require extensions of approximately 20 to 22 feet rather than the existing 10-foot limitation.

As per our discussion at the July 11 meeting, I have attached photographs of other installations that are similar in appearance to what is proposed under the requested code revision. The photos show wireless facilities in the cities of Federal Way and Mercer Island. The separation between the conductors and the toe of the antennas is in the 15 to 17 foot range approximately. As you will note, the antennas are flush mounted and in the case of the color photos (Qwest Wireless Federal Way facility) the antennas are painted to closely match the color of the utility pole to further camouflage the facility.

ATTACHMENT 1
FILE NO. IV-03-13

USA Proud Sponsor

Again, thank you and Nancy Cox for taking time to meet on July 11th to discuss these concerns. If you have any questions, require additional information, or would like Qwest to arrange a meeting with representatives from other wireless service providers regarding this issue or any other related to wireless facilities please feel free to contact me at (425) 652-5730.

Best regards,

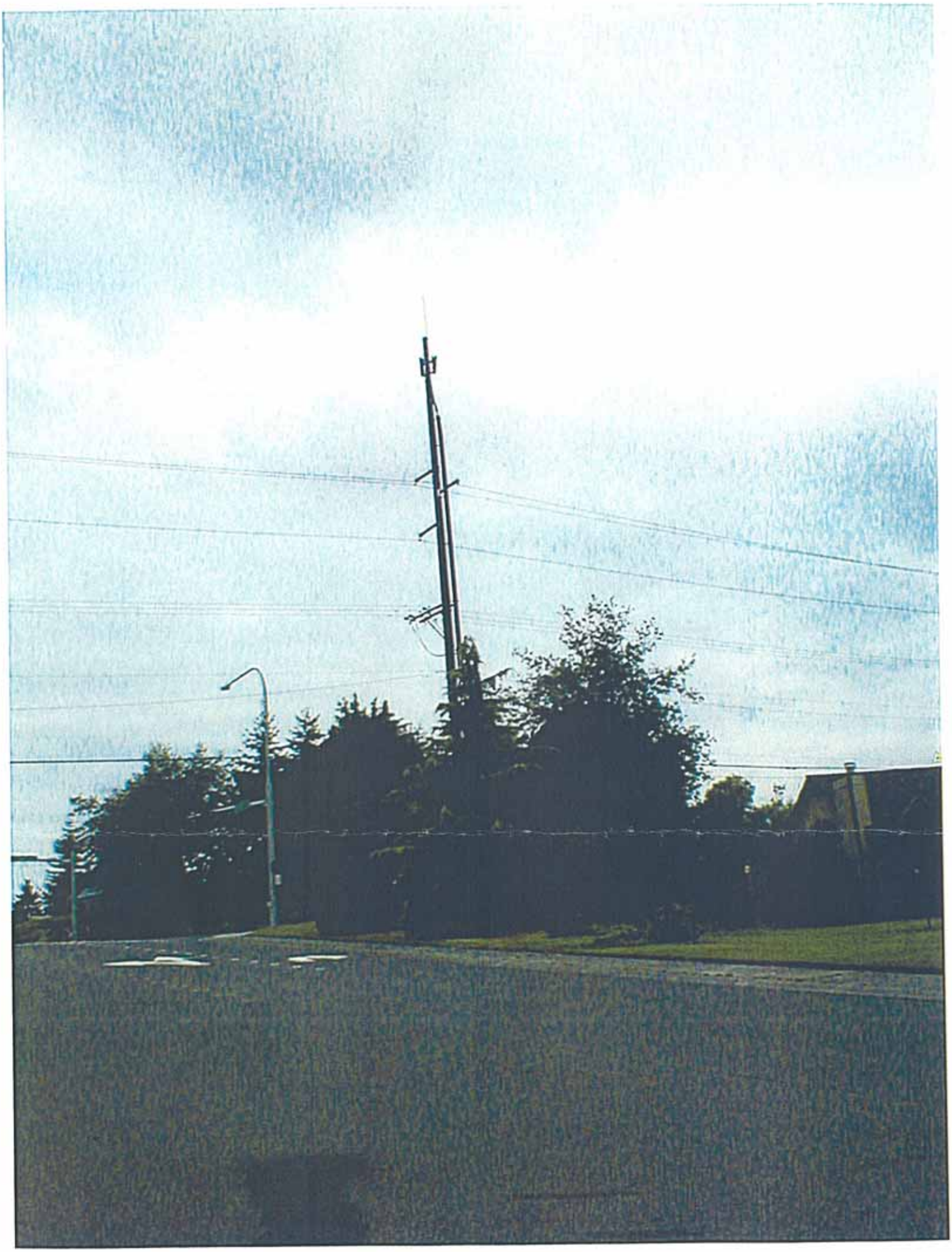
Greg McCormick

Greg McCormick, AICP
Land Use Director
Odelia Pacific Corporation
Agent for Qwest Wireless

cc: Nancy Cox, City of Kirkland
Rebecca Slick, Qwest Wireless
Adam Mihlstin, Qwest Wireless
Allison Yuen, Odelia Pacific Corporation

attachments

USWEST is now Qwest.



CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189
(425) 587-3225

**DETERMINATION OF NONSIGNIFICANCE (DNS) .**

CASE #: SEP03-00007 DATE ISSUED: 6/24/2005

DESCRIPTION OF PROPOSAL

**Amendments to Kirkland Zoning Code Chapter 117 - Personal Wireless Communication Facilities.**

PROPONENT:

LOCATION OF PROPOSAL

**CITY-WIDE**

LEAD AGENCY is **The City of Kirkland**

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

*There is no comment period for this DNS.*

Responsible official: 6/27/05
Date

Eric Shields, Director
Department of Planning and Community Development
425-587-3225

Address: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

You may appeal this determination to **NANCY COX at Kirkland City Hall, 123 Fifth Avenue, Kirkland, WA 98033 no later than 5:00 p.m., Friday, July 08, 2005 by WRITTEN NOTICE OF APPEAL.**

You should be prepared to make specific factual objections. Contact Nancy Cox to read or ask about the procedures for SEPA appeals.

Please reference case # SEP03-00007.

cc: Case # IV-03-13

Distributed By: 6-27-05
Date:

ATTACHMENT 5
FILE NO. IV-03-13

SEPA_A, rev: 6/24/2005

**CITY OF KIRKLAND**
**123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (206) 828-1257**

**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**

**MEMORANDUM**

**To:** Eric Shields, AICP, SEPA Responsible Official

**From:** Michael Bergstrom, AICP, Consultant MB

**Date:** June 22, 2005

**File:** SEP03-00007

**Subject:** ENVIRONMENTAL DETERMINATION FOR AMENDMENTS TO CHAPTER 117 KZC – PERSONAL WIRELESS SERVICE FACILITIES; FILE NO. IV-03-13 X CITY OF KIRKLAND, APPLICANT

**Background:**

The City of Kirkland is proposing a thorough re-write of Chapter 117 KZC – Personal Wireless Service Facilities. Once adopted, a new Chapter 117 will replace the current Chapter 117. The proposal restructures and reorganizes Chapter 117, clarifies provisions, and adds new Sections (User Guide, Exemptions, Prohibited Devices, Pre-Submittal Meeting, Determination of Application Completeness, Equipment Structure Standards, Removal From City Property – When Required, Lapse of Approval, Complete Compliance Required, Time Limit, Compliance With Other City Codes).

The proposal adds or revises several definitions, clarifies and modifies the required review process for different types of PWSF proposals, revises and adds flexibility to concealment technology and screening requirements, separates standards for antennas from standards for equipment structures for clarity, and increase the allowable height of antenna above electrical lines on utility poles, among other changes. A complete copy of the proposal is attached to the Environmental Checklist, enclosed. The proposal is likely to change to some extent as a result of industry and public input during the public review process.

The proposal is considered a "Non-Project Action" pursuant to WAC 197-11-704(2)(b)(ii) (SEPA Definitions). The proposal is not categorically exempt from the environmental review requirements pursuant to WAC 197-11-800, and therefore an Environmental Checklist and

Threshold Determination are required. An environmental checklist has been prepared for this action, and is enclosed.

**Environmental Issues**

Due to the non-project nature of the proposed amendments, no environmental issues were identified. Future development projects proposed in accordance with the amendments will be subject to, and reviewed pursuant to, the applicable provisions of SEPA.

**Conclusions and Recommendation:**

Based on my review of all available information and adopted policies of the City, I recommend that a Determination of Non-Significance (DNS) be issued for this proposal.

SEPA ENCLOSURES

Environmental Checklist, with proposal attached.

---

Review by Responsible Official:

I concur ✓

I do not concur ______

Comments: ______

Eric Shields, Director        6/22/05
Date

# CITY OF KIRKLAND ENVIRONMENTAL CHECKLIST

Purpose of Checklist:

The State Environmental Policy Act (SEPA), Chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the City identify impacts from your proposal, and to reduce or avoid impacts from the proposal, whenever possible

Instructions for Applicants:

This environmental checklist asks you to describe some basic information about your proposal. Answer the questions briefly with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the City staff can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The City may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impacts.

Use of Checklist for Non-project Proposals:

Complete this checklist for non-project proposals also, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NON-PROJECT ACTIONS (Part D).

For non-project actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable: ***Zoning Code Amendments – Chapter 117 KZX – Personal Wireless Service Facilities. File No. IV-03-9.***

2. Name of applicant: *City of Kirkland.*

3. Tax parcel number: *City-wide.*

4. Address and phone number of applicant and contact person:

   *Nancy Cox, Development Review Manager, Planning & Community Development, City of Kirkland, 123 Fifth Avenue, Kirkland, WA 98033-6189. (425) 587-3228.*

5. Date checklist prepared:

   *June 21, 2005*

6. Agency requesting checklist:

   *City of Kirkland.*

7. Proposed timing or schedule (including phasing, if applicable):

   *Amendments are anticipated to be adopted by City Council in Fall, 2005.*

8. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal?

   *New personal wireless service facilities (PWSF) will be subject to the amended provisions of Chapter 117 KZC, upon adoption of the proposal by the City Council.*

9. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

   *None.*

10. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

    *No.*

11. List any government approvals or permits that will be needed for your proposal, if known.

    *City Council adoption of the proposed amendments by ordinance. Houghton Community Council approval or lack of disapproval for amendments within its jurisdiction.*

12. Give brief, complete description of your proposal, including the proposed uses, the size and scope of the project and site including dimensions and use of all proposed improvements. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.

*The proposal consists of a thorough re-write of Chapter 117 KZC governing Personal Wireless Service Facilities in the city of Kirkland. Upon adoption, a new Chapter 117 will replace the current Chapter 117. The proposal restructures/reorganizes Chapter 117, clarifies provisions, and adds new Sections (User Guide, Exemptions, Prohibited Devices, Pre-Submittal Meeting, Determination of Application Completeness, Equipment Structure Standards, Removal From City Property – When Required, Lapse of Approval, Complete Compliance Required, Time Limit, Compliance With Other City Codes). It adds or revises several definitions, clarifies and modifies the required review process for different types of PWSF proposals, revises and adds flexibility to concealment technology and screening requirements, separates standards for antennas from standards for equipment structures for clarity, and increases the allowable height of antenna above electrical lines on utility poles, among other changes. A complete copy of the proposal is attached to this checklist. The proposal is likely to change to some extent as a result of industry and public input during the public review process.*

13. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

*The proposed amendments will apply city-wide.*

TO BE COMPLETED BY APPLICANT

EVALUATION FOR AGENCY USE ONLY
REVIEWED BY:

B. ENVIRONMENTAL ELEMENTS

1. EARTH

a. General description of the site (circle one): Flat, rolling, hilly, steep, slopes, mountainous, other
N/A - Proposal is a non-project action.

b. What is the steepest slope on the site (approximate percent slope)?
N/A - Proposal is a non-project action.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.
N/A - Proposal is a non-project action.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
N/A - Proposal is a non-project action.

e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.
N/A - Proposal is a non-project action.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
N/A - Proposal is a non-project action.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt, buildings)?
N/A - Proposal is a non-project action.

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:
N/A - Proposal is a non-project action.

2. AIR

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project

is completed? If any, generally describe and give approximate quantities, if known.
N/A - Proposal is a non-project action.

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.
N/A - Proposal is a non-project action.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:
N/A - Proposal is a non-project action.

3. WATER

a. Surface

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
N/A - Proposal is a non-project action.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
N/A - Proposal is a non-project action.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.
N/A - Proposal is a non-project action.

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.
N/A - Proposal is a non-project action.

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.
N/A - Proposal is a non-project action.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.
N/A - Proposal is a non-project action.

b. Ground

1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.
N/A - Proposal is a non-project action.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.) Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.
N/A - Proposal is a non-project action.

c. Water Runoff (including storm water):

1) Describe the source of runoff (include storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.
N/A - Proposal is a non-project action.

2) Could waste materials enter ground or surface waters? If so, generally describe.
N/A - Proposal is a non-project action.

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:
N/A - Proposal is a non-project action.

4. PLANTS

a. Check or circle types of vegetation found on the site:

_____ deciduous tree: alder, maple, aspen, other
_____ evergreen tree: fir, cedar, pine, other
_____ shrubs
_____ grass
_____ pasture
_____ crop or grain
_____ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
_____ water plants: water lily, eelgrass, milfoil, other

_____ other types of vegetation
N/A - Proposal is a non-project action.

b. What kind and amount of vegetation will be removed or altered?
N/A - Proposal is a non-project action.

c. List threatened or endangered species known to be on or near the site.
N/A - Proposal is a non-project action.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:
N/A - Proposal is a non-project action.

5. ANIMALS

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

birds: hawk, heron, eagle, songbirds, other
mammals: deer, bear, elk, beaver, other
fish: bass, salmon, trout, herring, shellfish, other
N/A - Proposal is a non-project action.

b. List any threatened or endangered species known to be on or near the site.
N/A - Proposal is a non-project action.

c. Is the site part of a migration route? If so, explain.
N/A - Proposal is a non-project action.

d. Proposed measures to preserve or enhance wildlife, if any:
N/A - Proposal is a non-project action.

6. ENERGY AND NATURAL RESOURCES

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
N/A - Proposal is a non-project action.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
N/A - Proposal is a non-project action.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:
N/A - Proposal is a non-project action.

7. ENVIRONMENTAL HEALTH

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.
N/A - Proposal is a non-project action.

1) Describe special emergency services that might be required.
N/A - Proposal is a non-project action.

2) Proposed measures to reduce or control environmental health hazards, if any:
N/A - Proposal is a non-project action.

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?
N/A - Proposal is a non-project action.

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.
N/A - Proposal is a non-project action.

3) Proposed measures to reduce or control noise impacts, if any:
N/A - Proposal is a non-project action.

8. LAND AND SHORELINE USE

a. What is the current use of the site and adjacent properties?
N/A - Proposal is a non-project action.

b. Has the site been used for agriculture? If so, describe.
N/A - Proposal is a non-project action.

c. Describe any structures on the site.

N/A - Proposal is a non-project action.

d. Will any structures be demolished? If so, what?
N/A - Proposal is a non-project action.

e. What is the current zoning classification of the site?
N/A - Proposal is a non-project action.

f. If applicable, what is the current shoreline master program designation of the site?
N/A - Proposal is a non-project action.

g. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
N/A - Proposal is a non-project action.

h. Approximately how many people would reside or work in the completed project.
N/A - Proposal is a non-project action.

i. Approximately how many people would the completed project displace?
N/A - Proposal is a non-project action.

j. Proposed measures to avoid or reduce displacement impacts, if any:
N/A - Proposal is a non-project action.

k. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
Proposal will be reviewed through a public review process. A public hearing will be held to invite public comment.

9. HOUSING

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
N/A - Proposal is a non-project action.

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
N/A - Proposal is a non-project action..

c. Proposed measures to reduce or control housing impacts, if any:
N/A - Proposal is a non-project action.

10. AESTHETICS

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
N/A - Proposal is a non-project action.

b. What views in the immediate vicinity would be altered or obstructed?
N/A - Proposal is a non-project action.

c. Proposed measures to reduce or control aesthetic impacts, if any:
N/A - Proposal is a non-project action.

11. LIGHT AND GLARE

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
N/A - Proposal is a non-project action.

b. Could light or glare from the finished project be a safety hazard or interfere with views?
N/A - Proposal is a non-project action.

c. What existing off-site sources of light or glare may affect your proposal?
N/A - Proposal is a non-project action.

d. Proposed measures to reduce or control light and glare impacts, if any:
N/A - Proposal is a non-project action.

12. RECREATION

a. What designated and informal recreational opportunities are in the immediate vicinity?
N/A - Proposal is a non-project action.

b. Would the proposed project displace any existing recreational uses? If so, describe.
N/A - Proposal is a non-project action.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:
N/A - Proposal is a non-project action.

13. HISTORICAL AND CULTURAL PRESERVATION

a. Are there any places or objects listed in, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
N/A - Proposal is a non-project action.

b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.
N/A - Proposal is a non-project action.

c. Proposed measures to reduce or control impacts, if any:
N/A - Proposal is a non-project action.

14. TRANSPORTATION

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on-site plans, if any.
N/A - Proposal is a non-project action.

b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?
N/A - Proposal is a non-project action.

c. How many parking spaces would the completed project have? How many would the project eliminate?
N/A - Proposal is a non-project action.

d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).
N/A - Proposal is a non-project action.

e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.
N/A - Proposal is a non-project action.

f. How many vehicular trips per day would be generated by the completed project? If know, indicate when peak volumes would occur.
N/A - Proposal is a non-project action.

g. Proposed measures to reduce or control transportation impacts, if any:
N/A - Proposal is a non-project action.

15. PUBLIC SERVICES

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.
N/A - Proposal is a non-project action.

b. Proposed measures to reduce or control direct impacts on public services, if any.
N/A - Proposal is a non-project action.

16. UTILITIES

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other
N/A - Proposal is a non-project action.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.
N/A - Proposal is a non-project action.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: Michael Bergstrom

Date Submitted: June 21, 2005

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(Do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?
The proposed amendments will have no effect on these elements of the environment.

   Proposed measures to avoid or reduce such increases are:
None necessary.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?
The proposed amendments will not affect plants, animals, fish, or marine life.

   Proposed measures to protect or conserve plants, animals, fish, or marine life are:
None necessary.

3. How would the proposal be likely to deplete energy or natural resources?
The proposed amendments will not deplete energy or natural resources.

   Proposed measures to protect or conserve energy and natural resources are:
None necessary.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?
The proposed amendments will not use or affect environmentally sensitive areas.

   Proposed measures to protect such resources or to avoid or reduce impacts are:
None necessary.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?
The proposal will amend the City's regulations governing the siting of personal Wireless

Service Facilities within the Kirkland city limits. It encourages the location of PWSF towers in nonresidential areas and prioritizes the location of PWSF on existing structures, particularly in the public right-of-way. It establishes standards for concealment and screening to minimize the visual and aesthetic impacts of PWSF on surrounding uses. The proposed amendments will not allow or encourage land or shoreline uses incompatible with existing plans.

Proposed measures to avoid or reduce shoreline and land use impacts are:
None necessary.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?
The proposed amendments will have no effect on transportation, public services, or utilities.

Proposed measures to reduce or respond to such demand(s) are:
None necessary.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.
The proposal will not conflict with such requirements.

ORDINANCE 4045

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING TITLE 23 (THE KIRKLAND ZONING CODE) OF THE KIRKLAND MUNICIPAL CODE; ADOPTING AMENDMENTS TO CHAPTER 117 OF THE KIRKLAND ZONING CODE REGULATING THE SITING OF PERSONAL WIRELESS SERVICE FACILITIES, MODIFYING THE CHAPTER ORGANIZATION, CLARIFYING PROVISIONS, ADDING NEW SECTIONS, AND REVISING PROVISIONS RELATING TO DEFINITIONS, SCREENING REQUIREMENTS, REVIEW PROCEDURES, ALLOWABLE HEIGHT, AND OTHER COMPONENTS OF CHAPTER 117 KZC (FILE NO. IV-03-13).

WHEREAS, the City Council has received from the Kirkland Planning Director a recommendation to amend Chapter 117 of the Kirkland Zoning Code – Personal Wireless Service Facilities, Ordinance 3719 as amended (Title 23 of the Kirkland Municipal Code), and bearing Kirkland Department of Planning and Community Development File No. IV-03-13; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, this action is exempt from the concurrency management process; and

WHEREAS, prior to making said recommendation, the Planning Director and Houghton Community Council, following notice thereof as required by RCW 35A.63.070, on August 29, 2005, and January 10, 2006, jointly held public hearings on the amendment proposal and considered the comments received at the hearings; and

WHEREAS, pursuant to the State Environmental Policy Act, there has accompanied the proposal and recommendation through the entire consideration process a Determination of Nonsignificance (DNS) issued by the Responsible Official, including supporting environmental documents, issued by the responsible official on June 27, 2005, pursuant to WAC 197-11-340 and WAC 197-11-390; and

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the report and recommendation of the Planning Director;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Chapter 117 of Ordinance 3719 as amended, the Kirkland Zoning Code (Title 23 of the Kirkland Municipal Code), is amended to read as set forth in Attachment A which by this reference is incorporated herein.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. To the extent the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said

Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance, but in no event sooner than thirty (30) days from and after its passage by the Kirkland City Council and publication, as provided in Section 4.

Section 4. Except as provided in Section 3, this ordinance shall be in full force and effect thirty days from and after its passage by the Kirkland City Council and publication, pursuant to Section 1.08.017 Kirkland Municipal Code, in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

Section 5. A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this _____ day of _____, 2006.

SIGNED IN AUTHENTICATION thereof this _____ day of _____, 2006.

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

**ATTACHMENT A**

**Chapter 117 - PERSONAL WIRELESS SERVICE FACILITIES**

Sections: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117.10 Policy Statement
117.~~05~~ 15 Definitions
117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability
~~117.65 Other Wireless Communications Facilities~~
117.25 Exemptions
117.30 Prohibited Devices
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~~117.25 Co-Location~~
117.~~20~~ 40 ~~Priority of Locations~~ Application Review Process
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117.70 Equipment Structure Standards
117.~~35~~ 75 ~~Landscaping/Buffering~~ Screening
117.~~70~~ 80 ~~Modifications~~ Departures From Chapter Provisions
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117.05 User Guide

This Chapter establishes the conditions under which Personal Wireless Service Facilities (PWSF) may locate and operate in different areas of the city. The provisions of this Chapter add to and in some cases supersede the other regulations of this code. If you wish to install, operate, or alter PWSF in Kirkland, you should read the provisions of this Chapter.

117.10 Policy Statement

~~The City has received requests to site towers and antennas.~~ The purpose of this Chapter is to provide specific regulations for the placement, construction, modification and removal of ~~personal wireless service facilities~~ PWSF. Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 332(c)(7), the provisions of this Chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent personal wireless services.

1. The goals of this Chapter are to:

~~(i)~~ a. ~~e~~Encourage the location of towers in nonresidential areas and to minimize the total number of tall towers throughout the City;

~~(ii)~~ b. ~~e~~Encourage the joint use of existing tower sites;

~~(iii)~~ c. ~~e~~Encourage users of towers and antennas to locate them, to the extent possible; in areas where the impact on the City is minimal,

~~(iv)~~ d. ~~e~~Encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas;

~~(v)~~ e. ~~s~~Strongly encourage the providers of personal wireless services to use concealment technology;

~~(vi)~~ f. ~~p~~Provide standards for the siting of ~~personal wireless service facilities~~ PWSF and other wireless communications facilities (such as television and AM/FM radio towers); ~~and~~

~~(vii)~~g. ~~f~~Facilitate the ability of the providers of personal wireless services to provide such services throughout the City quickly, effectively and efficiently; and

h. Prioritize the location of PWSF on existing structures such as ball field lights, transmission towers, utility poles or similar structures, particularly when located on public property.

2. Accordingly, the City Council finds that the promulgation of this Chapter is warranted and necessary to:

~~1~~ a. ~~To~~ ~~m~~Manage the location of towers and antennas in the City;

~~2~~ b. ~~To~~ p~~P~~rotect residential areas and other land uses from potential adverse impacts of towers and antennas;

~~3~~ c. ~~To~~ ~~m~~Minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;

4 d. ~~To~~ ~~a~~Accommodate the growing need for towers and antennas;

~~5~~ e. ~~To~~ ~~p~~Promote and encourage shared use and co-location on existing towers as a desirable option rather than construction of additional single-use towers; and

~~6~~ f. ~~To~~ ~~a~~Avoid potential damage to adjacent properties through engineering and proper siting of ~~personal wireless service facilities~~ PWSF.

117.~~05~~ 15 Definitions

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below**.** Terms not defined in this Section shall be defined as set forth in Chapter 5 KZC:

1. "Antenna" shall mean any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole, light standard, building or other structure for the purpose of providing personal wireless services and its attendant base station. Types of antennas include:

a. An "omni-directional antenna" receives and transmits radio frequency signals in a 360-degree radial pattern; ~~For the purposes of this chapter, a~~

b. A "whip antenna" is an omni-directional antenna that is up to 15 feet in height and up to four inches in diameter; and

~~b.~~ c. A "directional or panel antenna" receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.

2. "Antenna height" shall mean the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater. ~~Measurement of antenna height shall include the base pad, support structure, antenna, lightning rods, and other appurtenances.~~

3. "Building" shall mean a roofed structure used or intended for human occupancy.

~~3~~ 4. "Cell site" shall mean a tract or parcel of land or building that contains the ~~personal wireless service facilities~~ PWSF including any antenna, antenna support structure, accessory buildings, and associated parking, and may include other uses associated with and ancillary to personal wireless services.

~~4~~ 5. "Co-location" shall mean the use or placement of PWSF ~~a common personal wireless service facility or~~ on a tower by two or more personal wireless service providers or by one personal wireless service provider for more than one type of communication technology.

~~5~~ 6. "Equipment structure" shall mean a facility, shelter, cabinet or vault used to house and protect ~~the~~ electronic or other associated equipment necessary for processing wireless communications signals. "Associated equipment" may include, for example, air conditioning, backup power supplies, and emergency generators.

~~6~~ 7. "Existing structure" shall mean, but is not limited to, any existing building, ~~electrical transmission tower, flagpole, light standard,~~ utility pole, water ~~tank~~ reservoir, other support structure, and structures accessory ~~structures~~ thereto.

~~7~~ 8. "FAA" shall mean the Federal Aviation Administration.

~~8~~ 9. "FCC" shall mean the Federal Communications Commission.

~~9~~ 10. "Nonresidential" or "nonresidential zone" shall mean (1) all portions of the City (including rights-of-way adjacent thereto, measured to the centerline of the right-of-way) in an area not zoned residential as defined in this Chapter, or (2) the I-405 or SR 520 right-of-way.

11. "Other support structure" shall mean a structure used to support PWSF or equipment structures, excluding buildings, utility poles, and water reservoirs. Examples of "other support structure" include flagpoles and ballfield light standards,

~~10~~ 12. "Personal wireless services" and "personal wireless service facilities" (PWSF), as used in this Chapter, shall be defined in the same manner as in Title 47, United States Code, Chapter 5, Subchapter III, Part I, Section 332(c)(7)(C), as they may be amended now or in the future.

13. "Replacement structure" shall mean a structure that replaces or is intended to replace an existing structure of a similar design and similar primary purpose, to enable the installation of new or additional PWSF on that structure. If a "replacement structure" meets the definition of "tower", it shall be regulated as a new tower.

~~11~~ 14. "Residential" shall mean portions of the City in the following zones: RS 35; RSX 35; RS 12.5; RSX 12.5; RS 8.5; RSX 8.5; RS 7.2; RSX 7.2; RS 5.0; RSX 5.0; RM 5.0; RM 3.6; RM 2.4; RM 1.8; WD I; WD II; WD III; PLA 1; PLA 2; PLA 5A, D, E; PLA 6A, C, D, E, F, H, I, J, K; PLA 7A, B, C; PLA 9; PLA 15B; PLA 16; PLA 17; and P; and rights-of-way adjacent thereto, measured to the centerline of the right-of-way.

~~12~~ 15. "Tower" shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including any antenna support structure, self-supporting lattice towers or monopole towers. ~~, and does not include utility poles.~~ A "tower" shall not include a replacement utility pole as authorized by KZC 117.65.6.

16. "Utility pole" shall mean a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

117.~~15~~ 20 ~~New and Existing Facilities~~ Applicability

1. New ~~Facilities~~ Antennas and Towers – All new ~~personal wireless service facilities, including without limitation~~ antennas and towers~~,~~ shall comply with this Chapter unless the applicant had a vested application to site ~~a personal wireless service facility~~ said PWSF under a prior version of this ~~code~~ chapter, or unless specifically exempted by KZC 117.25.

2. Existing ~~Facilities~~ Antennas and Towers –
   a. The usage of ~~A~~ all ~~personal wireless service facilities, including without limitation~~ existing antennas and towers~~,~~ shall be allowed to continue ~~their usage~~ as ~~they presently~~ it exists as of the effective date of this ~~C~~chapter. Routine maintenance and reconfiguration of antennas shall be permitted on such existing antennas and towers, subject to the limitations below.
   b. ~~However, a~~Any reconfiguration pursuant to paragraph (a) above that increases the height or number of antennas ~~height~~ shall be treated ~~like~~ and processed as a new facility.
   c. Existing antennas that conform to the provisions of this chapter may be replaced by new antennas, if such new antennas are approved as a minor modification pursuant to KZC 117.105.
   d. The replacement of existing antennas that do not conform to the provisions of this chapter shall be treated and processed as a new facility.
   e. The replacement of an existing tower, whether that tower conforms or does not conform to the provisions of this chapter, shall be treated and processed as a new facility.

3. Equipment Structures –
   a. The usage of existing equipment structures shall be allowed to continue their usage as it exists as of the effective date of this Chapter. Routine maintenance, reconfiguration of, or additions to equipment structures shall be permitted, subject to the limitations below.
   b. Existing equipment structures may be replaced, and new equipment structures may be added to an approved antenna and/or tower, provided that the new equipment structures conform with the provisions of this chapter, and are approved as a minor modification pursuant to KZC 117.105

c. Reconfiguration or addition of equipment structures that increases the size of the equipment structure enclosure shall be treated and processed as a new facility.

d. Reconfiguration of or additions to a non-approved antenna or tower are not permitted, unless the entire facility obtains approval as a new facility through the appropriate review process.

4. ~~117.65~~ Other Wireless Communication Facilities - All of the provisions of this Chapter, which address personal wireless services and ~~personal wireless service facilities~~ PWSF, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television, satellite radio, global positioning systems (GPS), and AM/FM radio towers) to the maximum extent allowed by law.

~~117.25 Co-Location~~

~~To minimize potential adverse visual impacts associated with towers, co-location of antennas by more than one provider on personal wireless service towers shall take precedence over the construction of new personal wireless service towers. Providers are encouraged, by the opportunity for expedited review as provided in this Chapter, to co-locate antennas onto personal wireless service towers. Unless the applicant has shown by substantial evidence that it has made a good faith effort to mount the antenna on an existing personal wireless service tower the City may deny the application to construct a new personal wireless service tower.~~

117.25 Exemptions

The following are exempt from the provisions of this Chapter and shall be permitted in all zones, subject to any other applicable provisions of this Code:

1. Temporary PWSF during an emergency declared by the City.

2. Temporary PWSF located on the same site as, and during the construction of, a permanent PWSF for which appropriate permits have been granted.

3. Licensed amateur (ham) radio stations.

4. Satellite dish antennas two meters or less in diameter when located in non-residential zones, and satellite dish antennas one meter or less in diameter when located in residential zones, including direct to home satellite services, when used as an accessory use of the property.

117.30 Prohibited Devices

Except as exempted pursuant to KZC 117.25, PWSF that are not permanently affixed to a support structure and which are capable of being moved from location to location (e.g., “Cell on Wheels”) are prohibited.

117.~~55~~ 35 Permit ~~Requirement~~ Required

In all instances, a permit must be obtained from the City before any ~~personal wireless service facilities~~ PWSF may be constructed on any public or private land or right-of-way, including I-405, SR 520, and the Burlington Northern Railroad right-of-way, within the City limits.

117.~~20~~ 40 ~~Priority of Locations~~ Application Review Process

~~1.~~ After the applicant has satisfied the pre-submittal meeting requirements of KZC 117.45, an ~~An~~ application to site a ~~personal wireless service facility~~ PWSF shall be ~~subject~~ processed

according to the ~~criteria contained in the~~ table below. ~~Only when the application does not meet a criteria shall the next group of criteria be considered. The hierarchy of criteria is divided into three separate approval processes: administrative decision, Process I permit and Process IIB permit. The order of criteria for locating personal wireless service facilities shall be as follows~~: This table does not include all requirements for PWSF. Additional requirements and standards affecting design and location of PWSF can be found in Sections 117.65 (PWSF Standards), 117.70 (Equipment Structure Standards), and 117.75 (Screening).

| **Review Process** | **Facility Type** [1] |
|---|---|
| 1. Planning Official Decision<br><br>*(Construction permit review only, Planner issues decision).* | a) Co-location of antennas on existing towers in nonresidential zones. |
| | b) Attachment of antennas to existing buildings or mechanical equipment enclosures in a nonresidential zone. See KZC 117.65.7. |
| | c) Attachment of antennas to existing water reservoirs, utility poles, or other support structures in any zone.[2] See KZC 117.65.6. |
| | d) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed 18 inches or increase the diameter of the existing pole by more than 50%, whichever is less.[2] See KZC 117.65.6. |
| 2. Process I Permit<br><br>*(Planning Director Decision following public notice and comment, per Ch. 145 KZC)* | a) Co-location of antennas on existing towers in residential zones, not resulting in any increase to tower height. |
| | b) New towers in nonresidential zones, not exceeding 40 feet in height.[4] |
| | c) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed 24 inches or increase the diameter of the existing pole by more than 100%, whichever is less.[2] See KZC 117.65.6. |
| | d) Attachment of antennas to non-residential buildings, such as schools or churches, in residential zones.[3] See KZC 117.65.7. |
| 3. Process IIA Permit<br><br>*(Hearing Examiner holds public hearing and issues decision, per Ch. 150 KZC)* | a) New towers in nonresidential zones, exceeding 40 feet in height.[4] |
| | b) Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will exceed the diameter of the existing pole by more than 100% or 24 inches, whichever is less. |
| | c) Attachment of antennas to multi-family residential buildings in any zone.[3] |
| 4. Process IIB Permit<br><br>*(Hearing Examiner holds public hearing, City Council issues decision, per Ch. 152 KZC)* | a) Co-location of antennas on existing towers in residential zones resulting in an increase in tower height.[3] |
| | b) New towers in residential zones, not exceeding 40 feet in height.[3, 4] |
| | c) Departures from standards contained in this Chapter, subject to the limitations of KZC 117.80. |
| | d) Any facility that does not qualify for review as a Planning Official decision, Process I permit, or Process IIA permit as listed above.[3] |

Footnotes:

1 Although this table specifically addresses antennas and towers, it is presumed that for each facility there will be associated equipment structures, and there may be structural alterations to existing support structures. Such equipment structures and structural alterations shall be reviewed through the same process as the facility with which they are associated, subject to the limitations of KZC 117.20.

2 Attachment of antennas to existing water reservoirs or other support structures, or to existing or replacement utility poles, where such attachment results in a height increase to the original support structure, may be approved only once through the review process indicated. Any

subsequent proposal that would result in a height increase shall be reviewed through Process IIB.

3 If in a residential zone, the applicant shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints or technological feasibility, no other location is available.

4. An application for a new tower shall not be approved unless the applicant demonstrates, to the satisfaction of the City, that an attempt was made to co-locate the proposed antenna on an existing structure, and that such attempt was spatially, structurally, or technically infeasible.

| | |
|---|---|
| ~~a. Administrative Decision~~ | ~~1) Co-location of antennas on personal wireless service towers in nonresidential zones.~~<br>~~2) Attachment of antennas to existing structures in nonresidential zones:~~<br>~~• Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>~~• Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>~~• All appurtenances and screening (including personal wireless service facilities) may not exceed 5% of the total roof area of a building and/or 5% of any façade of a building.~~<br>~~3) Equipment structures may not exceed 500 cubic feet with a 5-foot height limit in residential zones.~~<br>~~4) Antennas may be attached to ball field light standards, electrical transmission towers, water tanks or existing utility poles in residential zones. Whip antennas may exceed the structure height by a maximum of 15 feet and other antennas may exceed the structure height by a maximum of 10 feet.~~ |
| ~~b. Process I Permit~~ | ~~1) New personal wireless service towers and associated equipment in nonresidential zones:~~<br>~~• Located at least a distance equal to 100% of antenna height from any property line adjacent to or across the street from a residential use or residential zone;~~<br>~~• Antenna height is a maximum of 40 feet.~~<br>~~2) Attachment of antennas to existing structures in nonresidential zones:~~<br>~~• Whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet;~~<br>~~• Otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and~~<br>~~• All appurtenances and screening (including personal wireless service facilities) may not exceed 10% of the total roof area of a building and/or 10% of any façade of a building.~~ |
| ~~c. Process IIB Permit~~ | ~~1) Any personal wireless service facility that is unable to meet the preceding priority of locational criteria for an administrative decision or Process I permit; see also KZC 117.70.~~ |

~~2. Further Process IIB Permit Requirements – An applicant for a new facility to be located in a residential zone shall demonstrate that a diligent effort has been made to located the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available. The personal wireless services provided is required to demonstrate that it contacted the landowners or owners of structures in excess of 30 feet within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than 30 feet within one-quarter mile of the proposed site.~~

117.45 Pre-Submittal Meeting

Before an application requiring review through Planning Official Decision, Process I, Process IIA, or Process IIB will be accepted for processing, the applicant shall attend a pre-submittal meeting with the Planning Official, as required by KZC 145.12, 150.12, or 152.12.

117.~~45~~ 50 Application Requirements

a. ~~In the course of reviewing any request for any approval required under this Chapter made by an applicant to install personal wireless service facilities, t~~The City shall act within a reasonable period of time on a complete application submitted pursuant to this Chapter, taking into account the nature and scope of the request~~, after an application has been determined to be complete~~. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

b. All applications required pursuant to this Chapter ~~for administrative decision, Process I and Process IIB permits to locate a personal wireless service facility (including, but without limitation, an antenna or tower in the City)~~ shall be made using forms provided by ~~submitted to~~ the Planning Department and shall be accompanied by the information and support materials identified on said forms.~~with the applicable requested information (depending upon the type of facility which is involved). A detailed plan that complies with the submittal requirements of this Chapter, and other regulations and ordinances of the City, along with other pertinent information requested by the City shall also be submitted. An applicant's submission may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information depending upon the type of facility which is involved:~~

~~1. All applicants must register their request with the City on a form provided by the City at the time of building permit or right-of-way use permit application.~~

~~2. A scaled site plan clearly indicating the location, type and height of the proposed tower, antennas, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, the equipment structure, fencing, buffering and the type of concealment technology which will be utilized. The full, detailed site plan shall not be required if the antenna is to be mounted on an existing structure.~~

~~3. Photosimulations of the proposed facility from affected residential properties and public rights-of-way.~~

~~4. A current map and/or aerial photograph showing the location of the proposed tower.~~

~~5. Legal description of the parcel, if applicable.~~

~~6. Approximate distance between the proposed tower and antennas, as applicable, and the nearest residential unit, or residentially zoned properties.~~

~~7. Information of sufficient detail to demonstrate that the equipment structure is the minimum size necessary.~~

~~8. A landscape plan showing specific landscape, screening and fencing materials.~~

~~9. A notarized letter signed by the applicant stating that the personal wireless service facilities PWSF will comply with all applicable federal and state laws, including specifically FCC and FAA regulations, and all City codes.~~

~~10. A notarized letter signed by the applicant stating that the antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.~~

~~11. Manufacturers information indicating compliance with adopted noise standards.~~

~~12. The personal wireless services provider must demonstrate that it is licensed by the FCC, if required to be licensed under FCC regulations.~~

~~13. The applicant, if not the personal wireless services provider, shall submit proof of a lease agreement with an FCC-licensed personal wireless services provider if such provider is required to be licensed by the FCC.~~

~~14. Propagation maps shall be provided showing that the tower and antennas are required for present and future network coverage in order to satisfy the requirements of the provider's grid system. The maps shall also demonstrate that the height specified is the minimum height necessary for the tower and antennas, as applicable. The maps shall additionally show coverage areas at the requested height and at lower heights. Finally, they shall show the neighboring or regional facilities with which the facilities in the City can communicate.~~

~~15. If the site is within or adjacent to a residential zone, then a study shall be provided showing why alternative locations are not acceptable.~~

~~16. All providers shall submit satisfactory evidence that the facility is designed for and will provide services primarily for residents of the City and/or visitors within City limits.~~

~~17. See also KZC 117.40(2), Further Process IIB Permit Requirements, and KZC 117.55, Third Party Review.~~

117.55 Determination of Application Completeness

1. Planning Official Decisions: Within 28 calendar days after the date of submittal of the application, the Planning Official shall determine whether the application is complete. If the application is not complete, the Planning Official shall identify and communicate the needed components to the applicant. Once the application is complete, the Planning Official shall process the application.

2. Process I, Process IIA, and Process IIB Permits: The determination of completeness for Process I, Process IIA, and Process IIB permit applications shall occur pursuant to the process set forth in Chapters 145, 150, and 152 KZC, respectively.

117.~~50~~ 60 Third Party Review

In certain instances (~~including all~~ particularly Process IIA and IIB permit applications) there may be a need for expert review by a third party of the technical data submitted by the ~~personal wireless services provider~~ applicant. The City may require such a technical review, to be paid for by the applicant. ~~for the personal wireless service facilities~~. The selection of the third party expert shall be by mutual agreement between the applicant and the City, and such agreement not to be unreasonably withheld by either party. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering.

The expert review is intended to be a site-specific review of technical aspects of the ~~personal wireless services, facilities~~ PWSF, and other matters ~~as~~ described herein, and not a subjective review of the site selection. In particular, but without limitation, the expert shall be

entitled to provide a recommendation on the height of the proposed facilities relative to the applicant's coverage objectives and system design parameters. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions, and any specific technical issues outlined by the City or other interested parties.

To facilitate the expert review, an applicant for a Process IIB permit for a new tower in a residential zone, or for the co-location of antennas on existing towers in residential zones resulting in an increase in tower height, the applicant shall submit a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land and buildings and structures taller than 30 feet within ¼ mile of the proposed site. The applicant shall demonstrate that he/she contacted the landowners or owners of structures taller than 30 feet within a ¼ mile radius of the proposed site, and was denied permission by those owners to locate the facility on their land or their structures.

Based on the results of the third party review, the City may require changes to the application ~~for the personal wireless service facilities that~~ to comply with the recommendations of the expert.

117.~~30~~ 65 ~~Design~~ PWSF Standards

1. Context - The location and design of a cell site~~s in the City~~ shall consider ~~the~~ its visual and physical impact ~~of the site~~ on the surrounding neighborhood and shall, to the extent feasible, reflect the context within which it is located.

2. Design Compatibility - ~~Facilities~~ PWSF shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, ~~and~~ design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape to the maximum extent practical.

3. Concealment Technology. ~~- Concealment technology applies to all personal wireless service facilities, including, without limitation, antennas, towers and equipment structures. For any facility, "concealment technology" means the use of both existing and future technology through which a personal wireless service facility is designed to resemble an object which is already present in the local environment, such as a tree, streetlight, or traffic signal. It also includes:~~ One or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the PWSF:

   a. For personal wireless service towers:

      If within an existing stand of trees, ~~"concealment technology" means that~~ the tower ~~is to~~ shall be painted a dark color, ~~is~~ and be made of wood or metal.~~, and that a~~ A greenbelt easement is required to ensure permanent retention of the surrounding trees.

      ~~"Concealment technology" for~~ t Towers in a more open setting ~~means that they must~~ shall have a backdrop (for example, but not limited to, trees, a hillside, or a structure) on at least two sides, be a color compatible ~~color~~ with the backdrop, be made of materials compatible ~~materials~~ with the backdrop, and ~~that~~ provide architectural or landscape screening ~~be provided~~ for the ~~other two~~ remaining sides. If existing trees are the backdrop, then a greenbelt easement is required to ensure permanent retention of the surrounding trees. ~~In all cases w~~Where ~~a greenbelt easement is required, it~~ The greenbelt easement shall be the minimum

necessary to provide screening and may be removed at the landowner's request in the event the facility is removed.

Antennas shall be integrated into the design of any ~~personal wireless service~~ tower to which they are attached. External projections from the tower shall be limited to the greatest extent technically feasible. Where antennas are completely enclosed within the tower, the need for the backdrop described in the preceding paragraph may be reduced or eliminated, depending on the tower design and context.

b. For rooftop antennas or antennas mounted on other structures:

~~For o~~ Omni-directional antennas mounted on the roof ~~15 feet or less above the roof, "concealment technology" means use~~ shall be of a color compatible with the roof, structure or background.

~~For o~~ Other antennas~~, "concealment technology" means~~ shall use ~~of~~ compatible colors and architectural screening or other techniques approved by the City.

Antennas shall be integrated into the design of ~~any existing structure or support~~ the structure to which they are attached. External projections from the ~~existing structure or support~~ structure shall be limited to the greatest extent technically feasible.

c. ~~For a~~ Antennas mounted on one or more building facades~~: "Concealment technology" means~~ shall: (a) use ~~of~~ color and materials ~~such that the facility has~~ to provide architectural compatibility with the building; ~~It shall~~ (b) be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible; and ~~shall~~ (c) not project above the wall on which it is mounted.

~~d. For equipment structures: "Concealment technology" means locating within a building, or if on top of a building, with architecturally compatible screening. An underground location, or locating above ground with a solid fence and landscaping, is also considered concealment technology.~~

d. Where feasible, cable and or conduit shall be routed through the inside of any new tower, utility pole, or other support structure. Where this is not feasible, or where such routing would result in a structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the structure. The outside cable or conduit shall be the color of the tower, utility pole, or other support structure, and the City may require that the cable be placed in conduit.

e. Alternative measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process of that the optional measures will be at least as effective in concealing the PWSF as the measures required above.

f. Nonwithstanding the above, the manner of concealment for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

4. Setbacks - ~~Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or~~

~~across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ The following regulations apply, except for structures located in public right-of-way:

a. New towers in any zone shall be setback a minimum of 20 feet from any property line, plus an additional one-half foot for each foot of tower height above 40 feet (e.g., if the tower is 40' in height, the setback will be 20' from any property line; if the tower is 50' in height, the setback shall be 25' from any property line).

b. Replacement structures intended to accommodate a PWSF shall be setback a distance equal to or greater than the setback of the original structure from any property line adjacent to or across the street from a residential use or residential zone; and the lesser of ten (10) feet or the distance of the original structure from any property line adjacent to or across the street from all other uses or zones.

~~9~~ 5. Tower and Antenna Height - The applicant shall demonstrate, to the satisfaction of the City, that the tower and antenna are the minimum height required to function satisfactorily. Personal wireless service towers shall not exceed 40 feet in residential zones, as measured from the Average Building Elevation at the tower base to the highest point of the tower, antenna, or other physical feature attached to or supported by the tower. Examples of information that can be used to demonstrate that the tower and antennas are the minimum height necessary include, but are not limited to, propagation maps showing the necessity of the height to provide the required coverage, and a letter from a Radio Frequency engineer stating and explaining the necessity of the proposed height.

6. Antennas On a Utility Pole - Antennas mounted to an existing or replacement utility pole shall be subject to the following height limits:
   a. In any zone, 15' above the top of a pole not used to convey electrical service;
   b. In a residential zone, 15' above the electrical distribution or transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service; and
   c. In a nonresidential zone, 15' above an electrical distribution conductor or 21' above an electrical transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service.

~~10~~ 7. Antennas On ~~or Above~~ a ~~Structure~~ Building, Mechanical Equipment Enclosure, or Water Reservoir - ~~Antennas and equipment structures on or above a structure shall be subject to the following criteria:~~

a. Antennas, including panel or directional antennas, may be attached to the sides, parapets, mechanical penthouses, or similar elements, of buildings, subject to the limitations of this Chapter.

~~a~~ b. Antenna ~~and equipment structure~~ height is measured above the top of the roof, not from the parapet or from the Average Building Elevation of the building, mechanical equipment enclosure, or water reservoir.

~~b~~ c. ~~Only o~~ Omni-directional antennas may be roof-mounted, but may not be mounted on top of rooftop appurtenances. No panel or directional antennas may be mounted on roofs or project above the roofline, except as provided in subsection (g) below. The "roofline" of a water reservoir that incorporates a curved roof shall be the point at which the vertical wall of the water reservoir ends and the curvature of the roof begins.

d. Whip antennas may exceed the structure height by 15 feet, and other omni-directional antennas may exceed the structure height by 10 feet.

~~c~~ e. ~~All r~~Roof-mounted antennas must be set back from the edge of the roof a distance equal to 100 percent of antenna height.

~~d. Roof-mounted antennas and equipment structures shall be incorporated into the pitched or stepped roof form, and not appear as a separate penthouse or box.~~

~~e~~ f. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered.

~~f~~ g. Antennas, including flush-mounted panel or directional antennas, may be attached to an existing conforming mechanical equipment enclosure or stair or elevator penthouse or similar rooftop appurtenance which projects above the roof of the building, but may not project any higher than the enclosure.

~~g~~ h. ~~In no instance shall equipment structures, antenna and related equipment~~ Except for PWSF installed in an existing rooftop penthouse, PWSF shall occupy no more than ~~25~~ 10 percent of the total roof area of a building. Rooftop conduit shall be excluded from this calculation.

i. Building parapets or other architectural features, including rooftop mechanical equipment enclosures, stair or elevator penthouses, or similar rooftop appurtenances, shall not be increased in size or height solely for the purpose of facilitating the attachment of PWSF components.

~~h.~~ 8. Historic or Landmark Locations - No antennas shall be permitted on property designed as a historic resource or community landmark as identified in the Comprehensive Plan, unless such antennas have been approved in accordance with design requirements pertaining to historic structures.

~~i.~~ 9. Signal Interference - No antennas shall cause localized interference with the transmission or reception of any other communications signals including, but not limited to, public safety signals, and television and radio broadcast signals.

~~j.~~ 10. Support Wires - No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by construction codes adopted by the City. ~~the UBC to anchor the antennas, antenna arrays or support structures.~~

~~5~~ 11. Views - ~~Personal wireless service facilities~~ PWSF, including towers, must be located and oriented in such a way as to minimize view blockage.

~~6~~ 12. Lights, Signals and Signs - No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.

~~7. Equipment Structures -~~ *(moved to 117.70, below).*

13. Noise – The installation and operation of PWSF shall comply with the noise standards set forth in KZC 115.95.

~~8~~ 14. Federal Requirements - All ~~towers and antennas~~ PWSF must meet ~~or exceed~~ current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, ~~then~~ the owners of the ~~towers and antennas governed by this~~

~~Chapter~~ PWSF shall bring such ~~towers and antennas~~ PWSF into compliance with such ~~revised standards and regulations~~ changes in accordance with the compliance deadlines and requirements of such ~~standards and regulations~~ changes. Failure to bring towers and antennas into compliance ~~with such revised standards and regulations~~ shall constitute grounds for the removal of the tower or antenna at the owner's expense. ~~Additionally, I~~If, upon inspection, the City concludes that a ~~tower~~ PWSF fails to comply with such regulations and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the ~~tower~~ PWSF, the owner shall have 30 days to bring such ~~tower~~ PWSF into compliance with such standards and regulations. If the owner fails to bring such ~~tower~~ PWSF into compliance within said 30 days, the City may remove such ~~tower~~ PWSF at the owner's expense.

~~7~~ 117.70 Equipment Structures Standards ~~- The standards for equipment structures are as follows:~~

1. Maximum Size in Residential Zones - ~~e~~Equipment structures ~~may~~ shall not exceed ~~500 cubic feet~~ 5 feet in height. ~~with a 5-foot height limit in residential zones.~~ Equipment structure enclosures shall not exceed 125 square feet each. These limitations shall apply to each individual equipment structure and enclosure, provided that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to these limitations.

~~b~~2. Maximum Size in Nonresidential Zones - Gross floor area of equipment structures shall be the minimum necessary but not greater than 240 square feet per provider. Maximum height is 10 feet above average building elevation. These limitations shall not apply to equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone.

3. Equipment Structures Located in Right-of-Way - If ground-mounted, equipment structures shall not exceed a height of 30 inches. If mounted on poles, said structures shall comply with 117.70.6. Setback requirements do not apply to equipment structures located in the right-of-way.

4. Setbacks When Located on Private Property – Ground-mounted ~~personal wireless service facilities shall be located at least a distance equal to 100 percent of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.~~ equipment structures over 30 inches in height shall be setback at least 10 feet from all property lines; provided, that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to this requirement.

5. Equipment structures on or above a structure - Equipment structures on or above a structure shall be subject to the following criteria:

   a. ~~Antenna and e~~Equipment structure height is measured above the top of the roof, not the parapet.

   ~~d~~ b. When mounted to the roof of a building with a pitched or stepped roof form, Rroof-mounted ~~antennas and~~ equipment structures shall be incorporated into the ~~pitched or stepped~~ roof form, and not appear as a separate penthouse or box.

6. Equipment structures mounted on poles or towers -

a. Equipment structures may be mounted on utility poles or towers. The location and vertical clearance of such structures shall be reviewed by the Public Works Department and verified by the underlying utility owner to ensure that the structures will not pose a hazard to other users of the right-of-way.

b, Equipment structures mounted on utility poles or towers shall be located in a manner that minimizes clutter and visual impact.

~~a~~7. Compatibility - Equipment structures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.

8. Concealment - ~~For equipment structures: "Concealment technology" means~~ One or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment structure:

a ~~l~~Locating within a building or building appendage constructed in accordance with all applicable City codes, ~~or if~~

b Locating on top of a building, with architecturally compatible screening~~.~~ ,

c Locating ~~An~~ underground ~~location~~, ~~or~~

d ~~l~~Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.75.3, ~~is also considered concealment technology~~. or

e If mounted on a utility pole or tower, the equipment structure shall be of a similar color to that of the pole or tower to which it is attached, unless alternative measures are approved by the City as part of the applicable review process.

~~c~~9. Noise Standards - Equipment structures shall be oriented so that exhaust ports or outlets are pointed away from properties ~~which~~ that may be impacted by noise. The installation and operation of ~~E~~equipment structures shall comply with noise regulations in KZC 115.95. The City may require an assessment of noise after operation begins and remediation if the noise levels created are not within the prescribed limits. Cumulative noise impacts will be measured in cases where there is more than one equipment structure.

117.~~35~~ 75 ~~Landscaping/Buffering~~ Screening

1. General - Landscaping~~, as described herein,~~ shall be required to screen as much of the ~~new personal wireless service tower~~ PWSF and any ground-mounted features, including fencing, as possible, ~~the fence surrounding both the tower and any other ground level features (such as an equipment structure),~~ and in general soften the appearance of the site. The City may allow or require ~~any other form of~~ the use of concealment technology, as described in KZC 117.65.3, either instead of or in addition to required landscaping, ~~if it~~ to achieve~~s~~ ~~the same degree of~~ effective screening ~~as the required landscaping~~. The effectiveness of visual mitigation techniques ~~must~~ will be evaluated by the City, ~~in the City's discretion,~~ taking into consideration the site as built. If the antenna is mounted on ~~an existing~~ a building, and the equipment structure is housed inside the building, landscaping shall not be required.

2. Existing Vegetation - Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance will result in less visual impact of the site on the surrounding area.

3. Buffering –

a. Except for PWSF located in a public right-of-way and subject to review as a Planning Official decision, ~~B~~buffering of ground-mounted ~~personal wireless service facilities~~ PWSF shall be required around the perimeter of the facility as follows:. ~~Landscape buffering shall at a minimum comply with the requirements of KZC 95.25(3) except that all trees must be evergreen~~

i. Provide a five-foot-wide landscaped strip with one row of trees planted no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of two inch caliper, minimum, and/or coniferous trees at least six feet in height, minimum. At least 50 percent of the required trees shall be evergreen.

ii. Living ground covers planted from either four-inch pots with twelve-inch spacing or one-gallon pots with eighteen-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the trees.

b. As an option to the buffering measures described in (a) above, the City may approve or require one or more of the measures provided for below, if the City determines that such measures will provide effective screening. Such optional measures include, but are not limited to, the following:

i. Walls or solid fencing, of a height at least as high as the equipment it screens, subject to KZC 117.75.4 below.

ii. Architectural features, such as parapets, mechanical penthouses, or building fin walls.

iii. Climbing vegetation supported by a structure such as a fence or trellis, of a type and size that will provide a dense visual barrier at least as high as the equipment it screens within two years from the time of planting.

iv. Screening by the natural topography of the site or the adjoining property or right-of-way.

4. Fencing - Fencing may be allowed or required if it is needed for security purposes, or if it is part of concealment technology. The use of chain link, plastic, vinyl or wire fencing is prohibited unless it is fully screened from public view. Landscaping shall be installed on the outside of fences. Fencing installed specifically for the purpose of screening ground-mounted PWSF shall not be taller than necessary to provide appropriate screening.

5. Maintenance – The applicant shall maintain the screening in good condition and shall replace any plants required by this chapter or approved or required as part of the permit approval that are unhealthy or dead. In the event that ~~landscaping~~ screening is not maintained at the required level, the City, after giving 30 days' advance written notice to the provider, may maintain or establish the ~~landscaping~~ screening and bill both the landowner and provider for such costs until such costs are paid in full.

6. Nonwithstanding the above, the manner of screening for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

117.~~70~~ 80 ~~Modifications~~ Departures From Chapter Provisions

Provisions of this Chapter shall not be subject to variances described in Chapter 120 KZC. However, through Process IIB, Chapter 152 KZC, the City may consider ~~modification of standards in the~~ departures from Chapter provisions except for the following:

1. The 40-foot height limit for personal wireless service ~~facilities~~ towers in residential zones; and/or

2. The 15-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones.

~~2. A 20-foot minimum distance between a ground-mounted personal wireless service facility and any property line adjacent to or across the street from a residential use or residential zone.~~

117.~~40~~ 85 Non-Use/Abandonment

1. Bond - The City may require a bond or other suitable performance security ~~as per~~ pursuant to Chapter 175 KZC to cover the costs of removal of the antenna or tower.

~~2. Annual Report - The provider must confirm in writing to the City on an annual basis that the personal wireless service facility is still in use on a form to be provided by the City.~~

~~3~~ 2. In the event the use of any ~~tower or antenna~~ PWSF will be discontinued for a period of 60 consecutive days, the owner or operator shall so notify the City in writing, and the ~~tower or antenna~~ PWSF shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and affidavits from the ~~tower or antenna~~ PWSF owner or operator regarding the issue of ~~tower or antenna~~ PWSF usage. Upon such abandonment, the owner or operator of the ~~tower or antenna~~ PWSF or the owner of the property upon which such facility is located shall have an additional 60 days within which to:

a. Reactivate the use of the ~~tower or antenna~~ PWSF or transfer the ~~tower or antenna~~ PWSF to another owner or operator who makes actual use of the PWSF ~~tower or antenna~~; or

b. Dismantle and remove the ~~tower or antenna~~ PWSF. If such ~~tower or antenna~~ PWSF is not removed within said 60 days from the date of abandonment, the City may remove such ~~tower or antenna~~ PWSF at the facility owner's and property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

At the earlier of 60 days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval of the ~~tower or antenna~~ PWSF shall automatically expire.

117.90 Removal From City Property - When Required

A PWSF mounted to any City-owned property, utility pole, or other structure shall be removed if the City deems removal is necessary for the undergrounding of utilities, the sale, development, or redevelopment of City-owned property, or the demolition or alteration of a City-owned building or other structure. The PWSF shall be removed at no expense to the City.

117.~~75~~ 95 Appeals and Judicial Review

~~Appeals of administrative decisions shall be processed according to the appeal procedures for Process I; except, that any affected party may appeal and participate in the appeal; the time to appeal is taken from the date of administrative decision; and distribution of the appeal~~

~~hearing notice by the Planning Official shall be to the applicant, appellant, the official newspaper of the City, and posted on public notice sign(s).~~

1. An applicant may appeal a Planning Official decision to the Hearing Examiner. A written notice of appeal shall be filed with the Planning Department within fourteen (14) days of the date the Planning Official's decision was mailed or otherwise delivered to the applicant. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least seventeen (17) days prior to the hearing. The applicant shall have the burden of proving that the Planning Official made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse, or modify the decision being appealed.

2. Appeals of Process I, IIA, or IIB permits are processed, and judicial review shall occur, according to the appeal and judicial review procedures and provisions for ~~either~~ Process I, IIA, or IIB respectively.

117.100 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity or other actions approved under this Chapter within one year after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 117.95, the running of the one year is tolled for any period of time during which a court order in said judicial review proceeding prohibits the development activity or other actions. The applicant must substantially complete construction for the development or other actions approved under this Chapter and complete the applicable conditions listed on the notice of decision within two years after the final approval on the matter, or the decision becomes void. For development activity or other actions with phased construction, lapse of approval may be extended when approved under this Chapter and made a condition of the notice of decision.

117.105 Complete Compliance Required

1. General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this Chapter in order to do everything authorized by that approval.

2. Exception – Subsequent or Minor Modification – The Planning Official may approve a modification to the permit approved for the PWSF if:

   a. The modification is minor and will not substantially change the proposed facility; and

   b. The proposed modification will comply with the provisions of this Chapter in effect at the time of the modification request; and

   c. There will not be any substantial changes in the impacts on the neighborhood or the City as a result of the change.

   Any modification, other than as specified in paragraph 2 of this Section, must be reviewed and decided upon as a new PWSF approval under this Chapter.

117.110 Time Limit

Any time limit, pursuant to Chapter 36.70B RCW, upon the City's processing and decision upon applications under this Chapter may, except as specifically otherwise stated in this Chapter, be modified by a written agreement between the applicant and Planning Director. In

the event a permit constitutes or presents a special circumstance under the provisions of this Chapter, the time limits for the City to make a final decision and issue its notice of decision under Chapter 36.70B RCW are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

117.115 Compliance With Other City Codes

Compliance with the provisions of this Chapter does not constitute compliance, or remove from the applicant the obligation to comply, with other applicable provisions of this Code, the Comprehensive Plan, or any other ordinance or regulation of the City including, but not limited to, regulations governing construction or implementing the State Environmental Policy Act or the Shoreline Management Act.

117.~~80~~ 120 Conflict

Notwithstanding the requirements of Section 117.115 above, ~~To~~ to the extent that any provision or provisions of this Chapter are inconsistent or in conflict with any other provision of the Zoning Code, Comprehensive Plan or any ordinance or regulation of the City, the provisions of this Chapter shall be deemed to control. ~~Personal wireless service facilities~~ PWSF are permitted in the City pursuant to this Chapter notwithstanding the fact they are not mentioned in the use zone charts in Chapters 15 through 65 KZC.

117.~~60~~ 125 Violations and City Remedies

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Chapter 170 KZC, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this Chapter and all other remedies provided at law or in equity.

ORDINANCE 4045
PUBLICATION SUMMARY

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING TITLE 23 (THE KIRKLAND ZONING CODE) OF THE KIRKLAND MUNICIPAL CODE; ADOPTING AMENDMENTS TO CHAPTER 117 OF THE KIRKLAND ZONING CODE REGULATING THE SITING OF PERSONAL WIRELESS SERVICE FACILITIES, MODIFYING THE CHAPTER ORGANIZATION, CLARIFYING PROVISIONS, ADDING NEW SECTIONS, AND REVISING PROVISIONS RELATING TO DEFINITIONS, SCREENING REQUIREMENTS, REVIEW PROCEDURES, ALLOWABLE HEIGHT, AND OTHER COMPONENTS OF CHAPTER 117 KZC (FILE NO. IV-03-13).

Section 1. Identifies the specific amendments to Ordinance 3719, as amended, the Kirkland Zoning Code.

Section 2. Addresses severability.

Section 3. Establishes that this ordinance will be effective within the disapproval jurisdiction of the Houghton Community Council Municipal Corporation upon approval by the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance, but no sooner than thirty days after publication as provided in Section 4.

Section 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as thirty days after publication of said summary.

Section 5. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments.

The full text of this ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its regular meeting on the _____ day of _____, 2006.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

Attest:

_____
City Clerk

ORDINANCE 4046

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO FEES AND REIMBURSEMENT; AMENDING SECTION 5.74.070 (FEES CHARGED BY PLANNING DEPARTMENT) OF CHAPTER 5.74 (FEES AS REIMBURSEMENT) OF TITLE 5 (REVENUE AND FINANCE) OF THE KIRKLAND MUNICIPAL CODE, ESTABLISHING FEES FOR THE REVIEW OF PERSONAL WIRELESS SERVICE FACILITIES THROUGH PROCESS IIA, AND ESTABLISHING FEES FOR THE REVIEW OF MINOR MODIFICATIONS OF PERSONAL WIRELESS SERVICE FACILITIES.

WHEREAS, the City Council, on _____, 2006 adopted Ordinance No. _____ amending Chapter 117 (Personal Wireless Service Facilities) of Title 23 (the Kirkland Zoning Code) of the Kirkland Municipal Code; and

WHEREAS, said Ordinance resulted in changes to the processes by which certain Personal Wireless Service Facilities are reviewed; and

WHEREAS, it is necessary to amend Section 5.74.070 (Fees charged by planning department) of Chapter 5.74 (Fees as Reimbursement) of Title 5 (Revenue and Finance) of the Kirkland Municipal Code to be consistent with said Ordinance; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, this action is exempt from the concurrency management process; and

WHEREAS, pursuant to the State Environmental Policy Act, WAC 197-11-800(20), this action is exempt from the environmental review process;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 5.74.070 of the Kirkland Municipal Code is hereby amended as follows:

1. Under the Fee Type heading "Planning Official Decisions", the Fee Type "Personal Wireless Service Facility Administrative Decision" shall be amended to read "Personal Wireless Service Facility Planning Official Decision"; and

2. Under the Fee Type heading "Planning Official Decisions", there shall be added a new Fee Type to read "Personal Wireless Service Facility Subsequent or Minor Modification", and a corresponding Fee Amount shall be established in the amount of $600.00; and

3. Under the Fee Type heading "Process IIA Review", there shall be added a new Fee Type to read "Personal Wireless Service Facility Process IIA Review", and a corresponding Fee Amount shall be established in the amount of $14,640.00.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. This ordinance shall be in full force and effect thirty (30) days from and after its passage by the Kirkland City Council and publication, pursuant to Section 1.08.017 Kirkland Municipal Code, in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

Section 4. A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this _____ day of _____, 2006.

SIGNED IN AUTHENTICATION thereof this _____ day of _____, 2006.

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

# ORDINANCE 4046
# PUBLICATION SUMMARY

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO FEES AND REIMBURSEMENT; AMENDING SECTION 5.74.070 (FEES CHARGED BY PLANNING DEPARTMENT) OF CHAPTER 5.74 (FEES AS REIMBURSEMENT) OF TITLE 5 (REVENUE AND FINANCE) OF THE KIRKLAND MUNICIPAL CODE, ESTABLISHING FEES FOR THE REVIEW OF PERSONAL WIRELESS SERVICE FACILITIES THROUGH PROCESS IIA, AND ESTABLISHING FEES FOR THE REVIEW OF MINOR MODIFICATIONS OF PERSONAL WIRELESS SERVICE FACILITIES.

Section 1. Identifies the specific amendments to Section 5.74.070 of Title 5 of the Kirkland Municipal Code.

Section 2. Addresses severability.

Section 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as thirty days after publication of said summary.

Section 4. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments.

The full text of this ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its regular meeting on the _____ day of _____, 2006.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

Attest:

_____
City Clerk