



MEMORANDUM

DATE: January 20, 2016
To: Houghton Community Council and Planning Commission
FROM: Jeremy McMahan, Planning Manager
SUBJECT: Wireless and Utility KZC Amendments, File No. CAM15-00485

RECOMMENDATION

Review the potential code amendments in advance of a public hearing. The amendments will fall within the jurisdiction of the Houghton Community Council, so the Community Council should indicate if they wish to hold a public hearing.

The public hearing(s) will likely be scheduled for March.

BACKGROUND

Staff will be bringing forward a small bundle of necessary KZC amendments related to personal wireless service facility (PWSF) regulations (KZC 117) and utility regulations for electric transmission corridors.

PWSF Amendments:

In 2012 Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012” (the Spectrum Act). Section 6409 of the Act placed significant new limitations on local jurisdictions’ ability to regulate modifications of existing wireless antenna support structures and base stations. The Federal Communications Commission approved rules interpreting Section 6409 and those rules went into effect on April 8, 2015. The rules seek to remove barriers to wireless infrastructure deployment by limiting review processes and create tight timelines for jurisdictions to review wireless facility modifications. Most significantly, Section 6409 states that jurisdictions must approve an application to modify an existing tower or base station if such modification does not “substantially change” the physical dimensions of the tower or base station. “Substantial change” is defined by Section 6409 and the result for Kirkland is that allowed expansions to existing facilities are more permissive than the current KZC allows. The federal rule revisions also established what is referred to as a “shot clock” rule, which limits the time the jurisdiction has to approve or deny an application. Failure to meet the timeline constitutes approval of the application.

Because the rules went into effect in 2015 and supersede the City’s authority, staff has been administering the new rules as they relate to timing and substantial changes within the framework of

the existing KZC processes. Similarly, the nature of the rules do not create much room for substantive policy discussion and option on the KZC amendments. Staff will also include a number of minor updates to the wireless regulations to reflect industry changes in technology.

Additional details on the required changes are included in Attachment 1. Additional background on the rules may also be found on the following webpages from the National League of Cities and MRSC:

<http://www.nlc.org/Documents/Influence%20Federal%20Policy/FR%20Update%20Files/2015/Wireless%20Facility%20Siting%20Checklist.pdf>

<http://mrsc.org/Home/Stay-Informed/MRSC-Insight/March-2015/Model-Ordinances-for-New-Wireless-Antenna-Facility.aspx>

Electric Transmission Corridor Amendments:

Concurrent with the wireless amendments, staff will bring forward KZC amendments to clarify the process and criteria for large electrical facilities. With the 2035 Comprehensive Plan, the City adopted revisions to the Utilities Element including Policy U-7.7, which states:

Require siting analysis in the development review process for new and expanded electrical transmission and substation facilities to address land use and sensitive areas and to provide mitigation to minimize visual and environmental impacts.

In addition to siting analysis, the land use permit process for electrical transmission facilities needs to be clarified. Right now, the process for a Public Utility use varies depending on the zone in which the facility is proposed. This is problematic for corridor utilities like a new power line that may cross multiple zones. For example, in some zones there may be no review process, others may be Process IIA, and all require Process IIB when within the disapproval jurisdiction of the Houghton Community Council. Staff proposes to draft a new KZC section that consolidates the permit review process for large (115 kV and 230 kV) electrical corridor projects.

Attachments

1. Wireless Regulations Summary

Cc: Key Lyons, Busch Law Firm
Kerry Kriner, Puget Sound Energy

Implementation of New Wireless Regulations adopted by the FCC

The new rules (Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012-Spectrum Act) take effect April 8th, 2015. They seek to remove barriers to wireless infrastructure deployment by limiting review processes and creating tight timelines for jurisdictions to review wireless facility modifications.

- The new rules will supersede portions of the City's regulations for Personal Wireless Service Facilities in KZC Chapter 117.
- Modifications to wireless sites that are subject to the new rules allow:
 - The addition of an unlimited number of antennas
 - Increasing the height of existing towers up to 20 feet to add more antennas; and increasing the height of utility poles or building mounted facilities up to 10 feet to add more antennas;
 - Increasing the protrusion of antennas up to 20 feet from towers and up to 6 feet from structures;
 - Adding more equipment cabinets.
- How will implementation of the new rules affect the City of Kirkland?
 - Requires City to approve modification applications that do not result in a substantial change to existing wireless facilities and shortens the review to a maximum of 60 days (currently FCC mandates a 90 day review timeline for similar applications)
 - Removes aesthetic considerations from application review for modifications. Examples: City cannot require flush-mounting of antennas on building facades; limit the number of antennas; or restrict height and width increases further than what is allowed in the new rules.
- Staff is currently exploring several code issues, including:
 - Currently, KZC 117 does not allow new antennas to be mounted on *top* of buildings. Section 6409(a) may supersede this restriction for certain buildings.
 - The City currently requires wireless facility modifications to apply for, and attend, a pre-submittal meeting prior to applying for a land use permit. The review timelines imposed by the new rules may preclude this requirement for eligible facilities.
 - The new rules include required processes for new wireless technologies that use smaller size antennas, but use more of these antennas spread out over a coverage area (ex: Distributed Antenna Systems and Small Cell sites). KZC 117 does not currently include any reference to such sites, but expanding KZC 117 to include development standards will help regulate future applications.
- Staff is taking the following steps to comply with the new rules:
 - Apply the new rules to eligible facilities utilizing new application forms and checklists for intake
 - The City will need to revise KZC Chapter 117 to comply with the new rules.