

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

5 **Section 1.** General Findings.

6 The Kitsap County Planning Commission finds as follows:

- 7 1. The Washington State legislature, through RCW 36.32.120(7), has granted to county
8 legislative authorities the power to make and enforce, by appropriate resolutions or
9 ordinances, all police and sanitary regulations that are not in conflict with state law.
- 10 2. The Washington State legislature, through the Growth Management Act (GMA), Chapter
11 36.70A Revised Code of Washington (RCW), requires certain counties and cities to plan
12 for population growth in ways that, among other things, encourages development in
13 urban areas; reduces sprawl in the rural areas; protects open space, recreation, and the
14 environment; provides sustainable economic development and protects the health,
15 safety, and high quality of life enjoyed by residents of this state. Kitsap County is subject
16 to the requirements of GMA.
- 17 3. GMA, through RCW 36.70A.130, requires Kitsap County to comprehensively review, and
18 revise if necessary, its Comprehensive Plan and development regulations at least every
19 8-years. The most recent Kitsap County 8-year update concluded with the adoption of
20 the 2016 Kitsap County Comprehensive Plan on June 27, 2016 by Ordinance 534-2016.
21 In 2018, the County
- 22 4. GMA, through RCW 36.70A.130, also requires Kitsap County to continually review and
23 evaluate its Comprehensive Plan and development regulations. Kitsap County
24 performed a limited review and updated its Comprehensive Plan and development
25 regulations in 2018 with the adoption of Ordinance 565-2018.
- 26 5. The federal Telecommunications Act of 1996 (Act), 47 U.S.C. § 332 et seq., imposes
27 substantive and procedural limitations on state and local government authority to
28 regulate the location, construction, and modification of wireless facilities.
- 29 6. The Act, in 47 U.S.C. § 332(c)(7), requires state and local governments to act on siting
30 applications for wireless facilities "within a reasonable period of time after the request
31 is duly filed ... taking into account the nature and scope of such request." Failure to do
32 so may constitute a failure to act subject to legal challenge.
- 33 7. In 2009, the Federal Communications Commission (FCC) issued Declaratory Ruling FCC
34 09-99. This ruling provides guidance on what the FCC considers to be a presumptively
35 reasonable time for processing wireless facility applications.

- 1 8. In 2012, Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation
2 Act of 2012, also known as Section 6409(a) of the Spectrum Act, codified at 47 U.S.C. §
3 1455(a). This established additional substantive and procedural limitations on state and
4 local government authority to regulate "eligible facilities requests" by requiring that a
5 government "may not deny, and shall approve" a project application requesting
6 modification of an existing tower or base station that does not substantially change the
7 physical dimensions of such tower or base station.
- 8 9. On October 21, 2014, the FCC issued Report and Order FCC 14-153. This provided
9 guidance on the implementation of Section 6409(a) of the Spectrum Act (47 U.S.C. §
10 1455(a)) as well as additional guidance on Section 332(c)(7) of the Telecommunications
11 Act of 1996 (47 U.S.C. § 332(c)(7)) and Declaratory Ruling FCC 09-99. Rules established
12 by the Report and Order were codified at 47 CFR § 1.40001.
- 13 10. On September 26, 2018 the FCC issued Declaratory Ruling and Third Report and Order
14 FCC 18-133 to impose additional requirements and restrictions on local government
15 regulation of small wireless facilities. Rules and clarifications adopted in this Ruling are
16 codified in Title 47 CFR §1.6001 et seq.
- 17 11. Starting in 2014, Kitsap County researched and sought input from subject matter
18 experts to prepare initial draft language. Multiple County departments collaborated to
19 review and revise this language into preliminary draft code. The County solicited and
20 received preliminary feedback from a panel of wireless industry stakeholders.
- 21 12. The Department of Community Development (Department) used this initial language
22 and feedback to propose amendments to Kitsap County Code to increase consistency
23 with federal standards noted above, as well as with Comprehensive Plan policies and
24 Countywide Planning policies.
- 25 13. The formal amendment process began on October 24, 2018 with a briefing between the
26 Board of County Commissioners and the Department of Community Development.
- 27 14. Kitsap County conducted public outreach through a dedicated and up-to-date web page
28 and direct notification to various Kitsap County notification lists (GovDelivery &
29 NextDoor).
- 30 15. On December 18, 2018, the Kitsap County Planning Commission held a regularly
31 scheduled and properly noticed work study session to de-mystify and help people learn
32 about wireless communication facilities.
- 33 16. On January 8, 2019, the Kitsap County Planning Commission held a regularly scheduled
34 and properly noticed work study session to review the proposed code update and how it
35 will impact Kitsap County.

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

1 24. The proposed amendment to Kitsap County Code is consistent with federal standards,
2 the GMA, Kitsap County-wide Planning Polices, the Kitsap County Comprehensive Plan,
3 and other applicable requirements.

4 25. The proposed amendment to Kitsap County Code promotes the public interest and
5 welfare of the citizens of Kitsap County, and should be approved.

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

8 **RECOMMENDATION: Adopt the proposed amendments to Kitsap County Code attached**
9 **hereto as Appendix A and incorporated herein by this reference:**

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

12

13 **BY** _____

14 **Kim Allen, CHAIR**