



**Staff Report and Recommendation  
Update to Kitsap County Code  
Chapter 17.530 'Wireless Communication Facilities'**

|                                  |   |                      |
|----------------------------------|---|----------------------|
| <b>Report Date</b>               | 1/17/2019   | <b>Revision:</b> N/A |
| <b>Hearing Date</b>              | 2/5/2019  |                      |
| <b>Description</b>               | This Kitsap County code update: <ul style="list-style-type: none"><li>• Revises chapter 17.110 'Definitions'</li><li>• Fully repeals and replaces chapter 17.530 'Wireless communication facilities'</li><li>• Revises chapter 21.04 'Project Permit Application Procedures.'</li></ul> |                      |
| <b>Geographic Area Affected</b>  | Unincorporated Kitsap County  |                      |
| <b>SEPA</b>                      | Determination of Non-Significance   |                      |
| <b>Department Recommendation</b> | Recommend approval as proposed in Planning Commission Draft, January 15, 2019   |                      |

This report and recommendation are based on information available at the time of publication. If new relevant and material facts are discovered, this staff report will be revised and the department recommendation may change.

**1. Background**

The Kitsap County Comprehensive Plan describes the 20-year vision for unincorporated Kitsap County and how that vision will be achieved. The plan covers land use, economic development, environment, housing and human services, transportation, capital facilities and utilities as well as parks, recreation, and open space. The Comprehensive Plan is mandated by the Washington State Growth Management Act (GMA, RCW 36.70A).

A. Authority

The GMA mandates that Kitsap County's Comprehensive Plan and development regulations be reviewed and, if needed, revised at least every 8-years [RCW 90.70A.130(5)]. The most recent Kitsap County 8-year update concluded with the adoption of the 2016 Kitsap County Comprehensive Plan on June 27, 2016 by Ordinance 534-2016. The GMA also mandates that Kitsap County's Comprehensive Plan and development regulations be subject to continuing review and evaluation, allowing for periodic amendments to development regulations [RCW 36.70A.130(1)].

Kitsap County Code amendments must consider:

- Whether the proposed amendments are consistent with and supports other plan elements and or development regulations, and if not, what additional amendments to the plan and/or development regulations will be required to maintain consistency;
- Whether the proposed amendment to the plan and/or regulation will more closely reflect the goals and policies of the Comprehensive Plan;
- Whether the proposed amendment is consistent with the Kitsap County-wide Planning Policies; and
- Whether the proposed amendment complies with the requirements of the GMA.

Federal Communication Commission (FCC) regulates the telecommunications industry.<sup>1</sup> Federal requirements for wireless facility application processing derive primarily from five pieces of legislation (see Attachment C3 – Federal Communication Commission Legislative Citations). This legislation includes the:

- 1996 Telecommunications Act (1996 Act).
- 2009 Shot Clock Order<sup>2</sup> (2009 Order).
- 2012 Middle Class Tax Relief and Job Creation Act of 2012 (2012 Spectrum Act).
- 2014 Clarifications Order for the 2012 Act (2014 Order).
- 2018 Small Wireless Facilities Order (2018 Order).

The FCC justified the 2018 Order by summarily stating:

- approximately 80 percent of all new deployments will be small wireless facilities.
- Monthly data usage per smartphone subscriber rose to an average of 3.9 gigabytes per subscriber per month. This is an increase of 39 percent from 2015 to 2016.
- Upgrading to 5G infrastructure requires 10 to 100 times more antenna than currently exist in the nation. This means the possible deployment of up to 300,000 small wireless facilities in the next three to four years. That is roughly double the number of macro cells built within the last 30 years.

L.S. (Rusty) Monroe wrote an article at the request of American Planners Association that provides more detail regarding wireless facilities  
<http://www.telecomsol.com/www2/node/23> .

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<sup>1</sup> “The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the Commission is the federal agency responsible for implementing and enforcing America’s communications law and regulations”. <https://www.fcc.gov/about/overview>

<sup>2</sup> The FCC adopted a shot clock order in 2009 (See Attachment C3 – Federal Communication Commission Regulatory History. The order determined a “reasonable period of time” to review certain types of wireless facility permits (FCC 09-99).

B. Proposed Amendment

To address the FCC rules and implement the goals and policies of the Kitsap County Comprehensive Plan, the Department proposes to amend Kitsap County Code (KCC) as follows:

- Revise chapter 17.110 'Definitions' to maintain consistency with the FCC rulings.
- Repeal and replace chapter 17.530 'Wireless Communication Facilities'. The amendment will establish new section:
  - 17.530.010 'Purpose and Applicability' to address:
    - purpose of the code.
    - exempted facilities.
    - prohibited location and structures.
    - other applicable codes.
  - 17.530.020 'Nonconforming Uses and Structures' to address:
    - applicability of KCC chapter 17.570 'Nonconforming uses, structures and use of structures'.
    - ability to repair or rebuild damaged or destroyed non-conforming structures.
    - allowed collocation on non-conforming structures.
  - 17.530.030 'Permitting' to address:
    - permits required that reflect the FCC "shot clocks." (see Table 2: Wireless Communication Facility Permissibility). This section uses definitions established by the FCC to determine the required shot clock. (eg. collocation, modification, substantial change, small wireless facility)
    - application requirements for each permit type (eg. letter of exemption, ACUP, CUP).
    - noticing requirements by permit type consistent with KCC chapter 21.04 'Project Permit and Application Procedures'. Letters of exemptions do not require noticing.
    - time for review by permit type. This includes completeness of a permit, shot clock tolling, and clock restart after tolling.
    - fees.
    - the ability of the County to hire an expert third party review.
    - Kitsap County as the authority for approval.
    - permit duration and processes for an extension.
    - director's interpretation consistent with KCC 21.04.
    - appeal of decisions consistent with KCC 21.04.

Table 1: Wireless Communication Facility Permissibility

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

- 17.530.040 'General Development Standards' to address:
  - height calculation method.
  - visual appearance and the requirement to employ the most current stealth technology. This section includes the visual impact analysis required for an ACUP and CUP (see 17.530.030 'Permitting').
  - lighting limitations.
  - noise compliance with KCC 10.28 'Noise'.
  - agreements.
  - related equipment design criteria including location and size. The proposal requires the shrouding or concealment of all components. An applicant must demonstrate why a facility cannot shroud specific components.
  - standard of care.
  - structural integrity to withstand wind and ice.

- prevention of radio interference.
- radio frequency emission. Facilities, collectively, cannot exceed FCC thresholds.
- agreements for facilities on located on County property. This provision intends to reduce the time required for legal review of agreements.
- 17.530.050 'Regulations for non-tower and small wireless communication facilities' to address:
  - collocation.
  - height.
  - installation in the public right-of-way. Publicly posted prescribed requirements for facility
    - \* location.
    - \* height.
    - \* construction time and manner.
    - \* tree trimming.
- 17.530.060 'Regulations for tower-based wireless communication facilities' to address:
  - modification or collocation.
  - location.
  - height.
  - related equipment.
  - signs.
  - use of property and setbacks.
  - screening, landscaping, and fencing.
  - access road.
  - parking.
  - future use.
  - installation in the public right-of-way:
    - \* location.
    - \* height.
    - \* design requirements.
    - \* construction time and manner.
    - \* tree trimming.
- 17.530.070 'Maintenance and repair' to address:
  - facility automation. Visitation for maintenance or emergency repairs only.
  - facilities maintained to remain in good condition.
  - graffiti removal requirements.
  - process to replace the support structure.
- 17.530.080 'Abandonment and Removal' to address:
  - notice of intent to abandon.
  - presumed abandonment of non-functioning facilities.
  - effective date of abandonment.

- Revise chapter 21.04 'Project Permit Application Procedures' to clarify that applications for wireless facilities follow procedures prescribed in 17.530 'Wireless Communication Facilities'.

C. Geographic Description

The proposal impacts all unincorporated areas of Kitsap County.

**2. Department Recommendation**

Having analyzed the proposed amendment and other alternatives, if applicable, the Department recommends:

- Adoption of the amendment:
  - as proposed above
  - as described in Alternative \_\_\_ below
  - with revisions described below
  - with conditions described below
- Deferral of the amendment to a future docket
- Denial of the amendment

A. Rational

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan. The County must implement the Comprehensive Plan by adopting development regulations that are consistent with the plan. The Comprehensive Plan process includes public involvement as required by law. This involvement allows the public to influence the development of the Comprehensive Plan and regulations.

Pursuant to Kitsap County Code (KCC) section 21.08.100 'Review by planning commission' E. An amendment to all or any part of a plan, development regulation or amendment thereto shall be allowed only if it is consistent with the community vision statements, goals, objectives, and the policy directives of the Comprehensive Plan and the proposal preserves the integrity of the Comprehensive Plan and assures its systematic execution.

The County's current wireless facilities regulations, adopted in 1996, do not contain provisions reflecting the 2012 Spectrum Act, 2018 Small Wireless Facilities Order, or the corresponding implementing rules. The County must amend development regulations related to wireless facilities to comply with the Federal Communication Commission (FCC) standards.

The 2016 Kitsap County Comprehensive Plan (Land Use, Economic Development, and Capital Facility and Utilities Chapters) includes three goals and six policies applicable to wireless communication facilities. The proposal implements the following Comprehensive Plan goals and policies:

**Land Use Goal 4. Coordinate with other jurisdictions, tribal governments, agencies, special districts, and property owners to ensure coordinated and compatible land use planning and utilize Urban Growth Area Management Agreements with cities, as feasible.**

Land Use Policy 22. Preserve and protect features of historic, archaeological, cultural, scientific and educational value or significance through coordination and consultation with the appropriate local, state and federal authorities, affected Indian tribes, and property owners, through non-regulatory means.

**Land Use Goal 13: Protect Kitsap County's unique rural character.**

Land Use Policy 50. Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service.

Land Use Policy 54. In accordance with RCW 36.70A.070(5)(c):

- to preserve rural character of the County, emphasize controlling rural development; assuring visual compatibility of rural development with the surrounding rural area,
- reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area,
- protect critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources, and,
- protect against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

**Economic Development Goal 4. Support the further development of the Technology sector and business technology use in Kitsap County.**

Economic Development Policy 24. Support plans that evaluate and recommend changes that accommodate technology infrastructure for business growth.

Economic Development Policy 25. Support the technology sector with workforce development programs and policies that meet the needs of technology and technology led businesses.

Economic Development Policy 27. The County recognizes Internet Service connectivity is a valuable utility for both the urban and rural residents.

**Capital Facilities and Utilities Goal 8: Ensure utilities are provided in an efficient, coordinated and timely manner between Utility providers to meet the needs of the**

**County's future population.**

Capital Facilities and Utilities Policy 11: Minimize the visual impact of utility facilities on view corridors, vistas and adjacent properties by developing design standards for cellular towers, antennas and other types of utility facilities.

The proposal preserves Kitsap County's rural character by:

- Requiring permits based on facility type. The increments incentivize the installation of smaller facilities that collocate on existing facilities.
- Providing general design standards for all new facilities in code.
- Providing specific design standards and conditions of approval for various permit types.
- Requiring the use of stealth technology.
- Restricting the location of a facility on park land.
- Requiring shrouding related equipment when appropriate.
- Requiring screening a facility with a combination of fencing and vegetative buffers when appropriate.
- Requiring an alteration to the facility design, type, or location if the project proposal creates a significant visual impact or requires Federal Aviation Administration (FAA) lighting.
- Requirement to report and remove abandoned facilities.

The proposal supports the development of wireless infrastructure in both urban and rural areas by:

- Providing clear design criteria by facility type.
- Providing clear application requirements for each facility type. This reduces the time necessary to prepare and process requests for information.
- Adding predictability by adding a table with required permit review times.
- Adding a letter of exemption for facilities that meet prescriptive conditions and definitions.
- Providing clear exemptions for temporary or emergency facilities.
- Incorporating FCC definitions, processing times, and standards for review.

For the previously mentioned reasons, the proposed amendments satisfy the criteria of KCC 21.08.100 and implement the Comprehensive Plan goals and policies.

**3. Other Alternatives Considered**

- A. Not Applicable

**4. Analysis**

- A. Impacts to Kitsap County

Kitsap County received at least 326 permits applications since 2002 to construct new, or modify existing, wireless communication facilities (see Attachment A – Maps). A majority of those applications include collocation of new facilities on existing structures or modification/replacement (see Table 1). The proposal encourages collocation by exempting some facilities outright and conditionally exempting facilities requesting a collocation that don't substantially change an existing structure or facility. New facilities that collocate and shroud or conceal most of the components should reduce the visual impact of new facilities.

Table 2: Wireless Communication Facility Permits (2002 - 2018)<sup>3</sup>

| Application Type | Sum of Count |
|------------------|--------------|
| C-CELL           | 326          |
| Collocation      | 109          |
| New Tower        | 18           |
| (blank)          | 127          |
| Modify/Replace   | 71           |
| Modification     | 1            |
| Grand Total      | 326          |

The County expects to receive permits for collocation of wireless facilities on poles in the right-of-way and other publicly owned land or structures. This includes collocation on private structures located on public land (eg. Puget Sound Energy transmission line poles in the public right-of-way).

According to the 2016 Kitsap County Capital Facilities Plan “Kitsap County’s public buildings, which include government administrative offices, courtrooms, juvenile justice, maintenance facilities, and community centers, serve the county as a whole, including incorporated and unincorporated populations” (Page 4-33). As of 2018 the Kitsap County Department of Parks owns approximately 132 structures on 10,800 acres of park land. The Department of Public Works owns approximately 429 – 472 poles that can support small wireless facilities. This includes approximately 300 light poles and 43 intersections with 3-4 traffic light poles per intersection. The number of private poles located in the right-of-way is unknown at this time.

The County expects to receive permits to install tower-based facilities on in parks and forested areas. Tower-based facilities can have a large visual impact to surrounding properties or park visitors. Tree canopy and underbrush can conceal these facilities when initially constructed. However, tree harvesting or natural events can result in direct visual access to the facility. The proposal addresses this issue by:

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<sup>3</sup> C-Cell is an application type that includes all permits for wireless communication facilities. Permits without a description or title are considered (Blank) applications. These applications can be new structures or collocated facilities.

- establishing setback and screening requirements.
- incentivizing the use of more effective stealth technology. (e.g. The proposal allows a tower-based facility within 300 feet of a park boundary through an Administrative Conditional Use Permit (ACUP) if it is disguised through stealth technology as a tree or natural feature that is compatible with its surroundings and meets the requirements of 17.530.040 B 'Visual Appearance'.)

The proposal reflects preliminary feedback from the Planning Commission and industry stakeholder review (see Attachment C3 – Preliminary Feedback and Staff Response). The attachment provides additional rationale that further supports the proposal (see Attachment C1 – Draft Code for Planning Commission Review).

**B. State Environmental Policy Act (SEPA)**

The Kitsap County SEPA official reviewed the SEPA checklist prepared for this amendment (Attachment B2) and expects to issue a SEPA threshold determination of non-significance (DNS; Attachment B1).

Notice of the SEPA threshold determination will be:

- Filed with the Washington State Department of Ecology [SEPA Register](#);
- Published in the Kitsap Sun newspaper;

In accordance with Kitsap County Code (KCC 18.04.210; KCC 21.04.290.E.2) and the SEPA chapter in the Revised Code of Washington (RCW 43.21C.075; RCW 43.21C.080), appeals of this SEPA threshold determination must be filed by within fourteen days of the published notice of determination in Kitsap County Superior Court.

**5. Public Involvement and Outreach**

Kitsap County's public involvement and outreach in support of this amendment exceeds the requirements of the Growth Management Act (RCW 36.70A) and Kitsap County Code (KCC 21.08).

Kitsap County procured an outside law firm with subject matter expertise to prepare initial draft language. Multiple County departments collaborated to review and revise this language into preliminary draft code. These include the Departments of Community Development, Parks, Public Works, Information Services, and the Prosecuting Attorney's Office. The County solicited and received preliminary feedback from a panel of wireless industry stakeholders to inform the Planning Commission and Board of County Commissioner public processes (see Attachment C3 - Preliminary Feedback and Staff Response). The proposal for Planning Commission review (see Attachment C1 – Draft

Code for Planning Commission Review) includes revisions resulting from the preliminary feedback.

Three planning commission study sessions and an open house held prior to the public hearing will help inform the public about the proposal. The presentations from the first two sessions are available on the Kitsap County Code Updates website <https://www.kitsapgov.com/dcd/Pages/Code-Updates.aspx>. The website also provides links to supplemental information. This approach allows the public to learn about this proposal from the comfort of home.

- December 18, 2018 de-mystifies and helps people learn about wireless communication facilities.
- January 8, 2019 presents the proposal and how it will impact Kitsap County.
- January 22 answers questions regarding the first two sessions.

The Planning Commission comment period opened on January 8 and closes on February 12. A planning commission public hearing held on February 5, 2019 will provide the opportunity for verbal testimony.

To be included in the official record, written comments must be submitted to the Department of Community Development before 11:59 PM on Tuesday, February 12, 2019 using one of the following methods:

- Entered online via computer or mobile device.
- Emailed to [dgurnee@co.kitsap.wa.us](mailto:dgurnee@co.kitsap.wa.us).
- Mailed to 614 Division Street - MS36, Port Orchard, WA 98366.
- Dropped off at the Permit Center at 619 Division Street, Port Orchard, WA.
- Dropped off at the open houses listed above.

Notifications and announcements regarding this comment period and public hearing include the following:

- Legal notice published in the Kitsap Sun newspaper.
- Broadcast announcements via GovDelivery and Nextdoor.

Additional public involvement and outreach will occur in March when the Kitsap County Board of Commissioners consider the amendments.

## 6. Staff Contact

Report prepared by:

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### Attachments

- A - Existing Facility Map
- B1 – State Environmental Policy Act (SEPA) Determination (in process)
- B2 – State Environmental Policy Act (SEPA) Checklist
- C1 – Draft Code for Planning Commission Review
- C2 – Federal Communication Commission (FCC) Regulatory History
- C3 – Preliminary Feedback and Staff Response