

ORDINANCE NO. ~~570~~-2019
ORDINANCE AMENDING KITSAP COUNTY CODE TITLE 17, AND KITSAP COUNTY
CODE TITLE 21 REGARDING WIRELESS COMMUNICATION FACILITIES.

WHEREAS, the federal Telecommunications Act of 1996 (Act), 47 U.S.C. § 332 et seq., imposes substantive and procedural limitations on state and local government authority to regulate the location, construction, and modification of wireless facilities; and

WHEREAS, the Act, in 47 U.S.C. § 332(c)(7), requires state and local governments to act on siting applications for wireless facilities "within a reasonable period of time after the request is duly filed ... taking into account the nature and scope of such request." Failure to do so may constitute a failure to act subject to legal challenge; and

WHEREAS, in 1996, the Kitsap Board of County Commissioners (the "Board") enacted Ordinance No. 195-1996, which adopted a moratorium on land use permits for cellular communication facilities. Subsequently amended by Ordinance No. 195-A-1996, amended by Ordinance No. 195-B-1997, and repealed by Ordinance No. 206-1997; and

WHEREAS, in 1997, the Board enacted Ordinance No. 206-1997, which repealed Ordinance No. 195-1996 and Ordinance No. 195-B-1997 (not codified) and adopted land use and development standards for the siting and construction of wireless communication facilities; and

WHEREAS, in 2003, the Board enacted emergency Ordinance No. 305-2003, which amended § 17.470.050 by exempting certain 911 public safety communication facilities from certain lighting standards applicable to wireless communication facilities. The ordinance was adopted July 28, 2003 and effective for sixty days. Subsequently repealed by Ordinance No. 309-2003; and

WHEREAS, in 2003, the Board enacted Ordinance No. 309-2003, which repealed emergency Ordinance No. 305-2003 and amended § 17.470.050 by exempting certain 911 public safety communication facilities from certain lighting standards applicable to wireless communication facilities. Subsequently repealed by Ordinance No. 534-2016; and

WHEREAS, in 2003, the Board enacted emergency Ordinance No. 534-2016, which amended § 13.12.025 and comprehensive plan; and repealed and replaced Title 17 'Zoning' (13.12, 17.100, 17.105, 17.110, 17.120, 17.130, 17.140, 17.150, 17.160, 17.170, 17.180, 17.190, 17.200, 17.210, 17.220, 17.230, 17.240, 17.250, 17.260, 17.270, 17.280, 17.290, 17.300, 17.310, 17.320, 17.330, 17.340, 17.360A, 17.360B, 17.360C, 17.360D, 17.360E, 17.390, 17.400, 17.410, 17.420, 17.430, 17.440, 17.450, 17.460, 17.470, 17.480, 17.490, 17.500, 17.510, 17.520, 17.530, 17.540, 17.550, 17.560, 17.570, 17.580, 17.590, 17.600, 17.610); and

WHEREAS, in 2009, the Federal Communications Commission (FCC) issued Declaratory Ruling FCC 09-99, which provided guidance on what the FCC considers to be a presumptively reasonable time for processing wireless facility applications; and

1 **WHEREAS**, in 2012, Congress passed Section 6409(a) of the Middle Class Tax Relief and Job
 2 Creation 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 local
 4 government authority to regulate "eligible facilities requests" by requiring that a government
 5 "may not deny, and shall approve" a project application requesting modification of an existing
 6 tower or base station that does not substantially change the physical dimensions of such tower
 7 or base station; and

8 **WHEREAS**, 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. § 1455(a)) as
 10 well as additional guidance on Section 332(c)(7) of the Telecommunications Act of 1996 (47
 11 U.S.C. § 332(c)(7)) and Declaratory Ruling FCC 09-99. Rules established by the Report and Order
 12 were codified at 47 CFR § 1.40001; and

13 **WHEREAS**, on September 26, 2018 the FCC issued Declaratory Ruling and Third Report and
 14 Order 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 codified
 16 in Title 47 CFR §1.6001 et seq; and

17 **WHEREAS**, Kitsap County must update code to accommodate changing technology and
 18 encourage provision of wireless service to all residents while protecting viewsapes, aesthetics,
 19 rural character, and quality of life in the County.

20
 21 **NOW THEREFORE BE IT ORDAINED:**

22 **Section 1. Recitals Incorporated.** The recitals set forth above are hereby adopted in addition to
 23 the Kitsap County Board of Commissioner's findings in support of the regulations imposed by
 24 this ordinance.

25 **Section 2. General Findings.** The Kitsap County Board of Commissioners makes the following
 26 findings:

- 27 1. Kitsap County is subject to the requirements of the Washington State Growth
 28 Management Act (GMA), Chapter 36.70A RCW.
- 29 2. The GMA, RCW 36.70A.130(5), mandates that Kitsap County's Comprehensive Plan and
 30 development regulations be reviewed and, if needed, revised at least every 8-years.
 31 The most recent Kitsap County 8-year update concluded with the adoption of the 2016
 32 Kitsap County Comprehensive Plan on June 27, 2016 by Ordinance 534-2016.
- 33 3. The GMA, RCW 36.70A.130(1), also mandates that Kitsap County's Comprehensive Plan
 34 and development regulations be subject to continuing review and evaluation.
- 35 4. RCW 36.32.120(7) provides that the county legislative authorities shall make and
 36 enforce, by appropriate resolutions or ordinances, all such police and sanitary
 37 regulations as are not in conflict with state law.
- 38
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- 1
2 5. After review of the Kitsap County Code, the Department of Community Development
3 identified code amendments that align with Kitsap County Comprehensive Plan policies
4 including: land use, environment, economic development, and capital facilities and
5 utilities.

6 **Section 3. General Procedural Findings.** The Kitsap County Board of Commissioners makes the
7 following findings regarding the public participation process:

- 8 1. The formal amendment process began on October 24, 2018 with a briefing between the
9 Board of County Commissioners and the Department of Community Development.
10
11 2. Kitsap County conducted public outreach through a dedicated and up-to-date web page
12 and direct notification to various Kitsap County notification lists (GovDelivery &
13 NextDoor).
14
15 3. On December 18, 2018, the Kitsap County Planning Commission held a regularly
16 scheduled and properly noticed work study session to de-mystify and help people learn
17 about wireless communication facilities.
18
19 4. On January 8, 2019, the Kitsap County Planning Commission held a regularly scheduled
20 and properly noticed work study session to review the proposed code update and how it
21 will impact Kitsap County.
22
23 5. On January 22, 2019, the Kitsap County Planning Commission held a regularly scheduled
24 and properly noticed work study session to answer questions regarding the first two
25 sessions.
26
27 6. On February 19, 2019, following effective and timely legal notice, the Kitsap County
28 Planning Commission held a public hearing to accept testimony on the proposed
29 amendment to Kitsap County Code.
30
31 7. A public comment period on the proposed amendment to Kitsap County Code was open
32 January 8, 2019 through February 26, 2019. The County received twenty-five comments
33 through emails, letters, online submittal forms, and verbal testimony.
34
35 8. The Kitsap County Planning Commission considered the proposed amendment to Kitsap
36 County Code on March 19, 2019 at a regularly scheduled and properly noticed meeting
37 and recommended approval of the proposal, Staff Report Attachment C5 as amended,
38 through a unanimous commission vote.
39
40 9. On March 25, 2019, Kitsap County, as lead agency for the State Environmental Policy Act
41 (SEPA), issued a Determination of Non-Significance on the proposed code amendment.
42

- 1 10. On April 8, 2019, Kitsap County Department of Community Development (DCD) staff
 2 met with Kitsap County Department of Parks, Kitsap County Department of Public
 3 Works, Kitsap Public Utility District (KPUD), Puget Sound Energy, wireless industry
 4 representatives from the Wireless Policy Group, Verizon, AT&T, and T-Mobile to discuss
 5 proposed amendments to development regulations regarding wireless communication
 6 facilities.
 7
- 8 11. On April 16, 2019, the Planning Commission approved Findings of Fact on the proposed
 9 code amendment during a regularly scheduled and properly noticed meeting and
 10 forwarded them to the Board of Commissioners for consideration.
 11
- 12 12. On May 1, 2019, the Board of County Commissioners held a work study with the
 13 Department of Community Development to discuss the proposed code amendment.
 14
- 15 13. A second public comment period on the proposed amendment to Kitsap County Code
 16 opened from April 25, 2019 to May 13, 2019.
 17
- 18 14. On May 13, 2019, following effective and timely legal notice, the Kitsap County Board of
 19 County Commissioners held a public hearing to accept testimony on the proposed code
 20 amendment.
 21
- 22 15. On June 3, 2019, the Board of County Commissioners held a work study with the
 23 Department of Community Development to discuss the proposed code amendment.
 24
- 25 16. On June 10, 2019, the Board of County Commissioners deliberated on the proposed
 26 code amendment and, after consideration of public comment and the entire record
 27 related to this ordinance, made a final decision to adopt this ordinance.

28 **Section 4. Substantive Findings.** The Board of County Commissioners makes the following
 29 findings regarding the amendments to Title 17 (Zoning) and Title 21 (Land Use and
 30 Development Procedures) of the Kitsap County Code:

- 31 1. The proposed code amendment was developed according to, and are found to comply
 32 with, the requirements of the GMA, Chapter 36.70A RCW, the County-wide Planning
 33 Polices, the Kitsap County Comprehensive Plan, and other applicable laws and policies.
 34
- 35 2. Public participation occurred in the review of the proposed code amendment, as
 36 required by the GMA, and consistent with the State Environmental Policy Act and Kitsap
 37 County Code.
 38
- 39 3. The proposed code amendment promotes the public interest and welfare of the citizens
 40 of Kitsap County.

41 **Section 5.** Repeals Kitsap County Code section:

- 42 • 17.110.057 'Alternative technology'.

- 1 • 17.110.223 'Directional Panel Antenna'.
- 2 • 17.110.463 'Macro antenna array'.
- 3 • 17.110.480 'Micro antenna array'.
- 4 • 17.110.483 'Mini antenna array'.
- 5 • 17.110.547 'Parabolic antenna'.
- 6 • 17.110.707 'Support structure'.
- 7 • 17.110.765 'Wireless communication antenna array'.
- 8 • 17.110.780 'Whip antenna'.

9 **NEW SECTION. Section 6.** A new section is added to Kitsap County Code chapter 17.110
10 'Definitions', as follows:

11 17.110.073 "Antenna" means an apparatus designed for the purpose of emitting
12 radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to
13 Commission authorization, for the transmission of writing, signs, signals, data, images, pictures,
14 and sounds of all kinds, including the transmitting device and any on-site equipment, switches,
15 wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to
16 a tower, structure, or building as part of the original installation of the antenna. For most
17 services, an antenna will be mounted on or in, and is distinct from, a supporting structure such
18 as a tower, structure or building. However, in the case of AM broadcast stations, the entire
19 tower or group of towers constitutes the antenna for that station. For purposes of this section,
20 the term antenna does not include unintentional radiators, mobile stations, or devices
21 authorized under CFR Title 15.

22 **NEW SECTION. Section 7.** A new section is added to Kitsap County Code chapter 17.110
23 'Definitions', as follows:

24 17.110.103 "Base station" means the equipment and non-tower supporting structure at a fixed
25 location that enable FCC-licensed or authorized wireless communications between user
26 equipment and a communications network.

27 **NEW SECTION. Section 8.** A new section is added to Kitsap County Code chapter 17.110
28 'Definitions', as follows:

29 17.110.156 "Carrier" means a telecommunications company that offers telecommunication
30 services (as defined in 47 USC §153(53)) to users of wireless devices through radio frequency
31 signals. Synonymous terms are mobile service provider, wireless service provider, wireless
32 carrier or mobile carrier.

33 **Section 9.** Amends Kitsap County Code section 17.110.168 Collocation as follows:

34 17.110.168 "Collocation" means the use or addition of one or more wireless communications
35 facilities on any existing structure, whether or not already used as a wireless communication
36 facility. ~~use of a single support structure by more than one wireless services provider where~~
37 ~~appropriate, and/or placement of up to four support structures for collocation on a specific site.~~
38 ~~This may include shared facilities with Kitsap County central communications or public safety~~
39 ~~emergency communications equipment.~~

40

1 **NEW SECTION. Section 10.** A new section is added to Kitsap County Code chapter 17.110
2 'Definitions', as follows:

3 17.110.227 "Distributed antenna systems" means network of spatially separated antenna sites
4 connected to a common source that provides wireless service within a geographic area or
5 structure.

6 **Section 11.** Amends Kitsap County Code section 17.110.227 'Drinking establishments' as
7 follows:

8 17.110.228 ~~227~~ "Drinking establishments" means a business primarily engaged in the retail sale
9 of alcoholic beverages for consumption on the premises, including night clubs, bars, and
10 taverns. It shall not mean premises primarily engaged in the retail sale of food for consumption
11 on the premises, where the sale of alcoholic beverages is clearly accessory and incidental (e.g.,
12 comprises less than twenty percent of the gross receipts). This definition excludes brew pubs.

13 **Section 12.** Amends Kitsap County Code section 17.110.393 'Lattice support structure' as
14 follows.

15 17.110.393 "Lattice support structure" means a ~~guyed or~~ self-supporting three or four-sided,
16 open, metal frame structure used to support telecommunication equipment.

17 **NEW SECTION. Section 13.** A new section is added to Kitsap County Code chapter 17.110
18 'Definitions', as follows:

19 17.110.484 "Minimum Functional Height" means the shortest height at which a proposed
20 wireless communications facility can perform its intended function, including communications
21 and collocation. Minimum functional height is measured vertically from the ground level to the
22 highest point on the structure, including antennas and subsequent alterations.

24 **NEW SECTION. Section 14.** A new section is added to Kitsap County Code chapter 17.110
25 'Definitions', as follows:

26 17.110.494 "Modification" means any change made to an existing wireless communications
27 facility (facility). A modification constitutes a substantial change if (1) the change to the facility
28 meets the definition of substantial change herein provided; (2) the change would defeat the
29 existing concealment elements of the facility; or (3) the change does not comply with pre-
30 existing conditions associated with the prior approval of construction or modification of the
31 facility.

32 **Section 15.** Amends Kitsap County Code section 17.110.503 'Monopole' as follows:

33 17.110.503 "Monopole" means a wireless communications facility that consists of a single pole
34 structure, designed and erected on the ground or on top of a structure, to support
35 communications antennas and connecting appurtenances. ~~structure composed of a single spire~~
36 ~~used to support telecommunication equipment.~~

37 **NEW SECTION. Section 16.** A new section is added to Kitsap County Code chapter 17.110
38 'Definitions', as follows:

1 17.110.656 “Related equipment” means any piece of equipment related to, incidental to, or
 2 necessary for the operation of a non-tower wireless communication facility (facility) or tower-
 3 based facility. By way of illustration, not limitation, related equipment includes generators.

4 **Section 17.** Amends Kitsap County Code section 17.110.687 ‘Stealth technology’ as follows:
 5 17.110.687 “Stealth technology” means the camouflaging methods applied to wireless
 6 communication facilities (facilities) to render them more visually appealing and to blend the
 7 proposed facility into the existing structure or visual backdrop in such a manner to render it
 8 minimally visible to the casual observer. Such methods include, but are not limited to,
 9 architecturally screened roof-mounted antennas, building-mounted antennas painted to match
 10 the existing structure and facilities constructed to resemble trees, shrubs, light poles, flag poles,
 11 chimneys, church crosses, clock towers, gas station signs, statues, or rocks as appropriate to the
 12 surrounding environment. See Section 17.110.057, Alternative technology.

13 **NEW SECTION. Section 18.** A new section is added to Kitsap County Code chapter 17.110
 14 ‘Definitions’, as follows:

15 17.110.708 “Substantially change” or “substantial change” means a modification to an existing
 16 wireless communications facility (facility) that changes the physical dimensions of the tower or
 17 base station in any of the following ways:

18 A. Height.

- 19 1. For tower-based facilities outside the public right-of-way (ROW), the modification
 20 increases the height of the tower by more than 10%, or by the height of one additional
 21 antenna array with separation from the nearest existing antenna, not to exceed 20 feet,
 22 whichever is greater.
- 23 2. For tower-based facilities within the ROW and any base station, the modification
 24 increases the height of the facility by more than 10% or 10 feet, whichever is greater.
- 25 3. Changes in height shall be measured from the original support structure in cases where
 26 deployments are or will be separated horizontally, such as on rooftops. In all other
 27 circumstances, changes in height shall be measured from the original height of the
 28 facility plus any modification approved prior to the passage of the federal Spectrum Act
 29 (February 22, 2012).

30 B. Width.

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

37 C. Equipment cabinets.

- 38 1. For any facility or base station outside the ROW, the modification involves installation of
 39 more than the standard number of new equipment cabinets for the technology
 40 involved, not to exceed 4 cabinets.
- 41 2. For any facility or base station within the ROW, the modification involves installation of
 42 any new equipment cabinets on the ground if there are no pre-existing ground cabinets

1 associated with the structure, or involves the installation of ground cabinets that are
 2 more than 10% larger in height or overall volume than any other ground cabinets
 3 associated with the structure.

4 D. Excavation.

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

10 E. Stealth technology.

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

13 F. Prior conditions of approval.

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

16 **NEW SECTION. Section 19.** A new section is added to Kitsap County Code chapter 17.110
 17 'Definitions', as follows:

18 17.110.721 "Tower" means any structure built for the sole or primary purpose of supporting
 19 one or more antennas and related equipment, including but not limited to, self-supporting
 20 lattice towers, guy towers and monopoles. This does not include small wireless facilities as
 21 defined in Section 17.110.770 A.

22 **NEW SECTION. Section 20.** A new section is added to Kitsap County Code chapter 17.110
 23 'Definitions', as follows:

24 17.110.724 "Tower-guy-wired" means a tower supported by a tensioned cable designed to add
 25 stability to a free-standing structure.

26 **NEW SECTION. Section 21.** A new section is added to Kitsap County Code chapter 17.110
 27 'Definitions', as follows:

28 17.110.764 "Wireless" means transmissions through the airwaves including, but not limited to,
 29 infrared line of sight, cellular, broadband personal communication service, microwave, satellite,
 30 or radio signals.

31 **Section 22.** Amends Kitsap County Code section 17.110.770 'Wireless communication facility'
 32 as follows:

33 17.110.770 "Wireless communication facility" means the antennas, nodes, control boxes,
 34 towers, poles, conduits, ducts, pedestals, electronics and other related equipment used for the
 35 purpose of transmitting, receiving, distributing, providing, or accommodating wireless
 36 communications services. any unstaffed facility used for the transmission and/or reception of
 37 radio frequency (RF) signals through electromagnetic energy. This usually consists of an
 38 equipment shelter or cabinet, a support tower or structure used to achieve the necessary
 39 elevation, and the antenna array.

40 A. A "Small wireless facility" means a facility that meets each of the following conditions:

- 1 1. The facility:
 2 a. Is mounted on a structure 50 feet or less in height, with the height including any
 3 antennas; or
 4 b. Is mounted on a structure no more than 10 percent taller than other adjacent
 5 structures; or
 6 c. Does not extend an existing structure on which is to be located to a height of more
 7 than 50 feet or by more than 10 percent, whichever is greater.
 8 2. Each antenna associated with the facility, excluding associated antenna equipment is no
 9 more than three cubic feet in volume; and
 10 3. All other wireless equipment associated with the structure, including the wireless
 11 equipment associated with the antenna and any pre-existing associated equipment on
 12 the structure, is no more than 28 cubic feet in volume; and
 13 4. The facility is not required to be registered with the FCC under 47 CFR Part 17; and
 14 5. The facility does not result in human exposure to radiofrequency radiation in excess of
 15 the applicable FCC safety standards in 47 CFR 1.1307(b).
 16 B. A “non-tower wireless facility” means a facility that is not a small wireless facility and does
 17 not involve, as part of the initial installation or construction, a wireless support structure.
 18 The term includes antennas, data collections units, and related equipment, but shall not
 19 include any wireless support structure. Except as allowed for small wireless facilities, the
 20 need to construct a wireless support structure will transform the non-tower facility into a
 21 tower-based facility.
 22 C. A “tower-based wireless facility” means a facility installed or constructed with a Tower as
 23 defined in 17.110.721. Unless a DAS hub facility meets the definition of a small wireless
 24 facility, the DAS hub shall be considered a tower-based facility.

25 **Section 23.** Amends Kitsap County Code section 17.110.775 ‘Wireless communication support
 26 structure’ as follows:

27 17.110.775 “Wireless communication support structure” means a freestanding structure, such
 28 as a tower-based wireless communication facility, or any other support structure that could (or
 29 does) support the placement or installation of a facility. ~~structure specifically designed to~~
 30 support a wireless communication antenna array. ~~This may include a monopole structure,~~
 31 lattice structure or building.

32 **NEW SECTION. Section 24.** Repeals and replaces Kitsap County Code chapter 17.530 ‘Wireless
 33 Communication Facilities’, as follows:

34 **Chapter 17.530 WIRELESS COMMUNICATION FACILITIES.**

35 Sections:

- 36 17.530.010 Purpose and Applicability.
 37 17.530.020 Nonconforming uses and structures.
 38 17.530.030 Permitting.
 39 17.530.040 General development standards.
 40 17.530.050 Regulations for non-tower wireless communication facilities.
 41 17.530.060 Regulations for tower-based wireless communication facilities.

1 17.530.070 Maintenance, repair, or modification.

2 17.530.080 Abandonment and Removal.

3 **17.530.010 Purpose and Applicability**

4 A. Purpose. This chapter includes regulations and development standards for wireless
5 communication facilities (facilities) and related equipment. This chapter applies to facilities
6 located inside and outside a county right-of-way (ROW). These regulations and
7 development standards intend to:

- 8 1. Allow for a variety of facility types in many locations.
- 9 2. Reduce, preferably eliminate, the visual impact of facilities to surrounding properties.
- 10 3. Encourage creative approaches to locating facilities in ways that are compatible with the
11 surroundings.
- 12 4. Encourage and facilitate collocation of antennas, support structures and related
13 equipment on existing tower-based facilities or other structures that already support at
14 least one non-tower facility.
- 15 5. Provide a process to locate and identify new site locations in a comprehensive manner
16 with substantial public participation.
- 17 6. Require the use of stealth technology.

18 B. Exemptions. Each of the following are exempt from the regulations of this chapter and shall
19 not require a permit under this chapter:

- 20 1. Maintenance or replacement of the existing related equipment with new related
21 equipment that has the same height, width, and appearance, or smaller dimensions and
22 a less intrusive appearance. While a letter of exemption is not required, the
23 maintenance or replacement shall otherwise comply with all applicable regulations.
- 24 2. Military and civilian radar, operating within the regulated frequency ranges, for the
25 purpose of defense or aircraft safety.
- 26 3. Amateur and citizen band transmitters and antennas, satellite dishes or similar
27 communication facilities used for noncommercial purposes.
- 28 4. Two-way communication transmitters used on a temporary basis by "911" emergency
29 services, including fire, police, and emergency aid or ambulance service.
- 30 5. Antennas located wholly within another structure, and not visible from the outside.
- 31 6. Emergency communications equipment during a declared public emergency.
- 32 7. A temporary, commercial wireless facility installed for providing coverage of a special
33 event such as a fair, news coverage or sporting event. The wireless facility shall be
34 exempt from the provisions of this chapter for up to two weeks before and after the
35 duration of the special event.
- 36 8. A temporary, commercial wireless facility installed for a period of 180 days, subject to
37 renewals at the County's discretion, to provide service during repair, replacement, or
38 relocation of an existing facility or construction of a new facility.
- 39 9. Wireless communication facilities constructed to serve only first responders, such as
40 fire, police and emergency medical response services.

41 C. Prohibited locations and structures.

- 42 1. A facility shall not locate:
 - 43 a. On single-family residences or on any residential accessory structure.

- 1 b. On real property or structures listed, or eligible for listing, on the:
- 2 i. National or Washington Registers of Historic Places.
- 3 ii. Official historic structures or historic districts lists maintained by the county.
- 4 A facility that conducts a Section 106 review through the National Historic
- 5 Preservation Act (NHPA) of 1966, 54 U.S.C. § 300101 et seq., shall not be prohibited.
- 6 c. Where the visual impacts analysis required by Section 17.530.040(B) concludes that
- 7 a more than moderate visual impact will occur and cannot be mitigated.
- 8 2. Tower based wireless communication facilities are prohibited:
- 9 a. When it meets the definition of a guyed-tower.
- 10 b. In areas where utility lines are predominantly located underground.
- 11 c. Within 200 feet of the shoreline, as defined in KCC Title 22 'Shoreline Management
- 12 Program'.
- 13 d. Within a critical area or its buffer, as defined in Title 19 'Critical Areas Ordinance'.
- 14 e. Within 300 feet of the boundary line of a municipal park unless the tower-based
- 15 facility is disguised through stealth technology as a tree, natural feature, or structure
- 16 (e.g., silo, church steeple, or clock tower) that is compatible with its surroundings
- 17 and meets the requirements of 17.530.040 B 'Visual Appearance'.
- 18 3. Related equipment is prohibited in a right-of-way within 150 feet of a park boundary
- 19 line, unless the applicant acquires written consent of the County Engineer and the
- 20 appropriate park director.
- 21 D. Other regulations.
- 22 1. This chapter regulates only the land use permit from the department. A wireless
- 23 communication facility may require other permits or review under other local codes or
- 24 under state or federal law. This includes:
- 25 a. Chapter 14.04 'Technical Building Codes' regarding building permits.
- 26 b. Chapter 18.04 'State Environmental Policy Act' regarding environmental review.
- 27 c. Title 11 'Roads, Highways, and Bridges' regarding right-of-way permits.
- 28 The time in review requirements of the Federal Communication Commission (FCC) shall
- 29 apply separately to each permit.
- 30 2. Chapter 21.04 'Project Permit Application Procedures' shall not apply unless specifically
- 31 stated in this chapter.

32 **17.530.020 Nonconforming Uses and Structures**

- 33 A. The non-conforming provisions of Chapter 17.570 'Nonconforming uses, structures and use
- 34 of structures' apply except as provided in this section.
- 35 B. Non-conforming wireless communication facilities damaged or destroyed after June 10,
- 36 2019 due to any reason or cause may be repaired and restored at the same location. The
- 37 wireless communication facility (facility) shall otherwise comply with the terms and
- 38 conditions of this chapter. A complete application, as provided in Section 17.530.030
- 39 'Permitting,' to reconstruct the facility shall be filed with the department within one year
- 40 from the date the structure was destroyed.
- 41 C. Non-tower and small wireless facilities shall be allowed to collocate upon any existing non-
- 42 conforming base station or tower-based facilities.

43 **17.530.030 Permitting**

- 1 A. Permits required. An applicant shall obtain a land use permit from the department prior to
2 the installation or construction of any wireless communication facility (facility). This
3 chapter requires a(n):
- 4 1. Letter of exemption to:
 - 5 a. Collocate a non-tower facility that does not substantially change an existing,
6 approved facility.
 - 7 b. Collocate a small wireless facility on any existing structure.
 - 8 c. Replace a wireless support structure with a support structure of the same height,
9 width, and appearance, or smaller dimensions and a less intrusive appearance.
 - 10 2. Administrative conditional use permit (ACUP) to:
 - 11 a. Collocate a non-tower facility that substantially changes an existing, approved
12 facility.
 - 13 b. Collocate a non-tower facility on an existing structure that has not previously been
14 approved as a facility.
 - 15 c. Construct a small wireless facility on a new structure.
 - 16 d. Locate a tower-based facility within 500 feet of an existing tower-based facility.
 - 17 e. Construct a tower-based facility disguised through stealth technology as a tree,
18 natural feature, or structure (e.g., silo, church steeple, or clock tower) that is
19 compatible with its surroundings and meets the requirements of 17.530.040 B
20 'Visual Appearance'.
 - 21 3. Conditional use permit (CUP) to construct a tower-based facility that does not qualify for
22 an administrative conditional use permit (ACUP) in section 17.530.030 2.
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| 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 a support structure of the same height, width, and appearance, or smaller dimensions and a less intrusive appearance. | 60 | X | | |
| Collocation: | | | | |
| 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 | | |
| New facility and support structure: | | | | |
| 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, natural feature, or structure (e.g., silo, church steeple, or clock tower) that is compatible with its surroundings and meets the requirements of 17.530.040 B 'Visual Appearance'. | 150 | | X | |
| Tower-based facility that does not qualify for the Administrative Conditional Use Permit (ACUP) process. | 150 | | | X |

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

1 1.16100, as now or hereafter amended. While no further information in the application
 2 is required, all facilities shall comply with Section 17.530.040 'General Development
 3 Standards' except for subsections A and B.

4 3. Where a small wireless facility on an existing structure is proposed, the application for a
 5 letter of exemption shall contain all necessary information to verify that the facility
 6 meets the definition of a small wireless facility and to determine compliance with this
 7 chapter.

8 4. Where the replacement of a support structure with a support structure of the same
 9 height, width, and appearance, or smaller dimensions and a less intrusive appearance is
 10 proposed, the application for a letter of exemption shall contain engineer-stamped
 11 structural drawings that include:

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

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

- 19 1. A site plan drawn to scale.
- 20 2. A landscape plan drawn to scale.
- 21 3. Except for small wireless facilities, a report describing the proposed facility with
 22 technical reasons for its design. The report shall describe the height, dimension, and
 23 location of the proposed facility.
- 24 4. Documentation that the proposed facility complies with all applicable state and federal
 25 laws and regulations, including radio frequency emissions and aviation safety.
- 26 5. Documentation that the proposed facility complies with this chapter.
- 27 6. A visual impact analysis as described in Section 17.530.040 B.1.
- 28 7. Construction documents for structures:
 - 29 a. that include a seal and signature of a professional structural engineer, licensed in the
 30 State of Washington.
 - 31 b. designed to 60% completion to consider an application complete for noticing
 32 requirements in section 17.530.030 G2.
 - 33 c. designed to 100% completion prior to a site development activity permit, building
 34 permit, or both. Construction documents designed to 100% completion that
 35 significantly deviate from the initial submittal will result in denial of the permit.
- 36 8. When the facility is located on property not owned by the applicant, a copy of the
 37 document that grants the applicant authority to use all areas proposed and needed to
 38 comply with this chapter, including but not limited to screening, setbacks, parking, and
 39 vehicular and utility access. This submittal item:
 - 40 a. includes a letter of authorization with the initial application. The letter must
 41 reference all areas proposed and needed to comply with this chapter and shown on
 42 the site plan as required by 17.530.030 D.1.
 - 43 b. must be provided prior to the review of a site development activity permit, building
 44 permit, or both.

- 1 c. must include a copy of the document that grants the applicant authority as a
 2 condition of approval and cannot be waived. An application will not be approved
 3 without legal authorization to use areas that are necessary to approve construction
 4 of the facility.
- 5 9. If the applicant is not a carrier, proof that an agreement exists between the applicant
 6 and a carrier committing the carrier to use the proposed facility in carrier's service
 7 network. This submittal item:
 8 a. must be provided prior to the review of a site development activity permit, building
 9 permit, or both.
 10 b. will be a condition of approval and cannot be waived. An application will not be
 11 approved without such commitment.
- 12 10. A State Environmental Policy Act (SEPA) checklist when required by WAC 197-11-800, as
 13 now or hereafter amended, and Chapter 18.04 of Kitsap County Code.
- 14 E. Applications for a conditional use permit (CUP). A CUP application shall contain all
 15 information necessary to determine compliance with this chapter. The application requires
 16 at least:
 17 1. All information required in Section 17.530.030 D 'Applications for an ACUP'.
 18 2. Documented actual and reasonable efforts to collocate the facility. The documentation
 19 shall demonstrate that the applicant contacted the owners of and sought permission to
 20 install a facility on:
 21 c. All existing wireless support structures.
 22 d. Other tall structures or buildings within a one-mile radius of the proposed site.
- 23 3. Propagation studies. The application shall include at least one propagation study that
 24 shows wireless coverage or capacity for a tower-based facility that exceeds sixty feet in
 25 height.
 26 a. The propagation studies shall include, at a minimum, the following information:
 27 i. The current service and the service for at least two adjustment options at existing
 28 sites, if possible.
 29 ii. A description of the type and manufacturer of the proposed transmission/radio
 30 equipment.
 31 iii. The frequency range (megahertz band) assigned to the carrier.
 32 iv. The power, in watts, at which the carrier transmits.
 33 v. Any relevant related tests conducted by the applicant or carrier in determining the
 34 need for the proposed site and installation. All reasonable designated confidential
 35 proprietary information may be redacted.
 36 b. Only an adjustment will be allowed if a study demonstrates that the adjustment will
 37 eliminate a coverage or capacity gap.
 38 c. An adjustment may be required as a condition of approval if a study demonstrates
 39 that the adjustment will reduce the coverage or capacity gap.
- 40 4. Future collocation. The application shall include:
 41 a. Documentation that the applicant requested Kitsap 911 to determine the feasibility
 42 of collocating emergency service communications facilities. The proposed tower-
 43 based facility location and technical specifications shall be included with the request.

- 1 b. A written commitment that the applicant will allow other antennas to collocate on
 2 the tower-based facility where technically feasible.
- 3 5. FCC-license. Each applicant that proposes a tower-based facility shall submit a copy of
 4 its FCC license for the proposed location. The license shall include the name, address,
 5 and emergency telephone number for the operator of the facility.
- 6 F. Fees. All applications for permits or requests for actions by the county shall be accompanied
 7 by a filing fee in an amount established by county resolution. Fees for small wireless
 8 facilities must be:
- 9 1. a reasonable approximation of the County's costs.
 10 2. only objectively reasonable costs.
 11 3. no higher than the fees charged to similarly-situated competitors in similar situations.
- 12 G. Notice.
- 13 1. Letters of exemption shall not require public notice.
 14 2. ACUPs and CUPs. Within 14 calendar days from the submission of a complete
 15 application, the department shall:
- 16 a. Mail notice to every property owner within 1,200 feet of the proposed facility. New
 17 small wireless facility support structures located in the right of way are exempt from
 18 this requirement.
 19 b. Post notice on the property.
 20 The applicant is responsible for all costs associated with such notice. All notices shall
 21 contain the applicable information required by Section 21.04.210 'Notice of Application'
 22 or be a summary postcard with a link to such information.
- 23 H. Time for review.
- 24 1. Completeness.
- 25 a. The county shall notify the applicant in writing of any information that is required to
 26 complete an application within 10 calendar days of filing the application. The permit
 27 application automatically expires if the applicant fails to submit the requested
 28 information within 30 days of the department's written request.
- 29 b. Prior to the expiration date, the applicant may request an extension to provide the
 30 required information. The department may grant up to one 30-day extension if it is
 31 determined that the required studies or information warrants additional time.
 32 Financial hardship shall not be considered for extensions of deadlines.
- 33 c. Once the applicant has submitted the required information, the county shall notify
 34 the applicant within 10 days of the submittal if the application remains incomplete.
- 35 d. The time tolled between the date of the County's written notifications to the date all
 36 requested information is received shall not count towards the number of days an
 37 application is in review for a decision.
- 38 e. The County shall follow procedures in section 21.04.170 when an applicant does not
 39 provide information requested by the department regarding a project permit
 40 application that has been deemed complete for processing.
- 41 2. Letters of Exemption. Once an initial application has been filed, regardless of the
 42 deadlines for notice, the county has 60 calendar days, after accounting for the tolling
 43 provided above and restart time in review per section 17.530.030 H.5., to make its final
 44 decision on the application and to advise the applicant in writing of such decision.

- 1 3. ACUPs. Once an initial application has been filed, the county has 150 calendar days for
 2 tower-based facilities and 90 calendar days for non-tower facilities, after accounting for
 3 the tolling provided above and restart time in review per section 17.530.030 H.5., to
 4 make its final decision on the application and to advise the applicant in writing of such
 5 decision.
- 6 4. CUPs. Once an initial application has been filed, the county has 150 calendar days, after
 7 accounting for the tolling and restart time in review per section 17.530.030 H.5., to
 8 make its final decision on the application and to advise the applicant in writing of such
 9 decision.
- 10 5. Restart time in review.
- 11 a. Small wireless facilities. Submittal of information requested through sections
 12 17.530.030 H.1.a. and 17.530.030 H.1.c. shall restart the time in review of an
 13 application once. Requests for information by the county after the first restart shall
 14 not restart the time in review of an application again.
- 15 b. All other facilities. Submittal of information requested through 17.530.030 H.1.a.
 16 and 17.530.030 H.1.c. shall not restart time in review of an application.
- 17 6. Batching. Applicants for small wireless facilities may batch requests into a single
 18 application.
- 19 I. Experts. The department may hire any consultant(s) and/or expert(s) necessary to assist the
 20 department in reviewing and evaluating an application for a proposed facility. The
 21 applicant and/or owner of the facility shall reimburse the county for all reasonable and
 22 actual costs of the county's consultant(s) in providing expert evaluation and consultation in
 23 connection with these activities.
- 24 J. Approval. The department may approve, conditionally approve, or deny a permit for a
 25 facility. Approval or conditional approval may only be granted when the requirements of
 26 this chapter have been met. Approval may be revoked as provided in Kitsap County Code.
- 27 K. Permit Duration and extensions. A letter of exemption issued under this chapter expire
 28 within 12 months from the date issued if construction is not complete at that time. An
 29 Administrative Conditional Use Permit (ACUP) or Conditional Use Permit (CUP) issued under
 30 this chapter expire within four years from the date issued if construction is not complete at
 31 that time. Incomplete construction by the permit expiration date requires submittal of a
 32 new permit application. The department may grant one one-year extension when all of the
 33 following conditions are met:
- 34 1. The extension request is submitted in writing at least 30 calendar days prior to the
 35 expiration of the permit.
- 36 2. Significant concerns with the extension can be mitigated by minor revisions to the
 37 permit.
- 38 3. Tangible progress has been made toward completion.
- 39 4. An extension would not adversely impact public health, safety or general welfare.
- 40 L. Director Interpretations. A director's interpretation per Section 21.04.040 'Directors
 41 Interpretations' may resolve disputes regarding the interpretation of this chapter.
- 42 M. Appeals. A decision on a letter of exemption or an ACUP may not be appealed to the
 43 Hearing Examiner in accordance with Section 21.04.290 'Appeals'.

1 N. Revoked Permit. The County may revoke a permit pursuant to 17.600.010 'Revocation for
 2 noncompliance with conditions'. A facility with a revoked permit shall be considered
 3 abandoned and subject to section 17.530.080 B.

4 **17.530.040 General Development Standards**

5 A. Height. Wireless Communication Facilities (facilities) shall not exceed heights authorized in
 6 this chapter. Height is measured as the total vertical distance from the ground level,
 7 including any base pad, to the highest point of the facility, including any antennas,
 8 appurtenances, or related equipment.

9 B. Visual Appearance. All facilities shall employ the most current stealth technology to be the
 10 least visually and physically intrusive. All facilities shall also be aesthetically and
 11 architecturally compatible with the surrounding environment and shall be designed to
 12 blend with the existing surroundings.

13 1. Visual impact analysis.

14 a. Compatibility and visual impact shall be determined through a visual impact analysis.
 15 The analysis must use maps, photographs, photo-simulation, and other appropriate
 16 methods to show the existing topographical contours of the area and areas within a
 17 one-mile radius where any portion of the proposed facility can be seen. Line of sight
 18 includes from the ground to the rooftop of adjacent buildings.

19 b. When more than a moderate visual impact is likely, the visual impact analysis shall
 20 include a visual demonstration, such as the erection of a crane, a balloon in a color
 21 similar to that of the proposed structure and of a size not less than four feet and not
 22 to exceed six feet, or similar device used to simulate the proposed dimensions and
 23 height of the structure. Ten working days prior to the demonstration, the applicant
 24 shall notify:

25 i. The department.

26 ii. All properties within 800 feet of the parcel where the demonstration will occur.
 27 The department shall provide the list of properties within 800 feet.

28 2. More than moderate visual impact. A facility shall not be considered aesthetically
 29 compatible with the surrounding land uses if, within a one-mile radius, it results in more
 30 than a moderate visual impact. A "more than moderate" visual impact occurs when one
 31 or more of the following exist:

32 a. The facility becomes a predominant feature in the viewscape.

33 b. The facility disrupts a largely intact and unobstructed view of visually sensitive areas,
 34 which are those locations that provide views of one or more of the following: Puget
 35 Sound, lakes, large wetland complexes, major streams, valleys and ravines, large
 36 tracts of forested land, Mount Rainier, the Cascade mountain range or the Olympic
 37 mountain range. These views are particularly sensitive from certain places of the
 38 county, including residential areas, commercial areas, major transportation corridors
 39 and arterials in rural areas.

40 c. The facility is not designed and painted to blend in with the surrounding
 41 environment.

42 d. The facility is sited above visually predominant ridge lines.

- 1 e. The facility extends forty feet or more above the tree line determined by an analysis
2 of Site Potential Tree Height at 50 years (SPTH (50)), based on soil types.
- 3 f. Except for small wireless facilities, a non-tower facility is proposed in a visually
4 sensitive area and cannot be completely enclosed within the existing structure or
5 camouflaged as another structure compatible with the surrounding environment.
- 6 3. Other visual requirements. A facility must:
- 7 a. Place all required stickers or other identifying labels on the underside of related
8 equipment, or away from public view on ground-mounted equipment, and not near
9 ground level if on a tower-based facility.
- 10 b. Place and size antennas and related equipment to blend into the architectural detail
11 of the supporting structure. Paint or another coating may be required to be visually
12 compatible with the support structure.
- 13 c. Screen electrical meter cabinets to blend with the surrounding area. Use of smart
14 meters are preferred.
- 15 d. For proposed fences, the fence must:
- 16 i. Be at least six feet in height and no more than eight feet in height.
- 17 ii. Be of a nonobtrusive material, such as a dark vinyl coated chain link that blends
18 with the surrounding area.

19 C. Lighting.

- 20 1. This chapter prohibits all artificially lighted facilities except:
- 21 a. Permanent 911 public safety facilities. This includes fire, police and emergency
22 medical response services.
- 23 b. Facilities located at a 700-foot elevation and more than one-half mile from a
24 residential area.
- 25 2. The applicant shall provide a detailed plan for lighting if an artificially lighted facility is
26 allowed. The plan shall demonstrate that the proposed lighting does not have a
27 negative impact on adjacent properties and complies with state and federal regulations
28 for lighting. The applicant shall promptly report any outage or malfunction of FAA-
29 mandated lighting to the appropriate governmental authorities and to the county.
- 30 3. Any facility needing lighting per FAA regulations shall be altered to avoid the need for
31 lighting unless Section 17.530.040 C.1. applies.
- 32 4. The department may allow security lighting for ground mounted related equipment.
33 Security lighting shall be directed away from adjoining properties through shielding and
34 arrangement. No more than one foot-candle of illumination may leave the property
35 boundaries.

36 D. Noise. Facility operation and maintenance shall comply with Chapter 10.28 'Noise'.

37 E. Related equipment for small wireless facilities.

- 38 1. Antennas and antenna elements shall be enclosed within the facility.
- 39 2. Antennas and antenna elements unable to be enclosed within the facility require the
40 applicant to demonstrate the inability to do so. In such cases, the antenna and antenna
41 elements shall be within a shroud mounted at the top of the facility. An opaque cover
42 (e.g., dyed film) may be used to cover the antenna face. The offset distance between an
43 antenna and pole must not exceed 12 inches. The shroud and opaque cover:
- 44 a. Shall cover all antenna and antenna elements in a single antenna shroud.

- 1 b. Shall match the support structure color, finish, and visually conceal all contents
2 and/or wiring to the greatest extent possible. A solid shroud is preferred.
- 3 c. Shall be cylindrical for pole facilities and match the pole shaft diameter, when
4 feasible. The shroud diameter shall not exceed 18 inches. Once transitioned from
5 the support structure shaft, the shroud diameter shall remain consistent.
- 6 d. Shall not exceed a height of five feet. For light standards, this dimension is measured
7 from the top of the luminaire mast arm attachment point.
- 8 3. Antennas and antenna elements unable to be enclosed within the facility or shrouded at
9 the top of the facility require the applicant to demonstrate the inability to do so. In such
10 cases, a shrouded, externally mounted antenna package may be allowed if:
- 11 a. The shroud protrudes no more than 36 inches from the outer circumference of the
12 support structure.
- 13 b. The shroud height does not exceed five feet, mounted longitudinally to the structure
14 shaft.
- 15 c. The shroud and all parts of the antennae package are at least seven feet from the
16 ground.
- 17 4. A base shroud shall fully enclose all remaining equipment located on the structure. This
18 may include radios not mounted at top of structure, electric meters, and grounding
19 equipment. The base shroud shall:
- 20 a. Be structurally sound to fully support the proposed structure and maximize
21 equipment volume.
- 22 b. Not exceed a height of six feet.
- 23 c. Match the support structure color, finish, and visually conceal and lock all contents
24 and/or wiring to the greatest extent possible. A solid shroud is preferred.
- 25 d. Where the facility is a pole, install a shroud that is cylindrical with a maximum
26 consistent diameter of 18 inches not including small architectural banding features.
27 This diameter may increase up to 20 inches if the location combines multiple carriers
28 or uses.
- 29 5. Enclosures separate from the support structure may be allowed if:
- 30 a. The applicant demonstrates the inability to enclose or shroud antenna and antenna
31 equipment as prescribed in Section 17.530.040(E)(4).
- 32 b. The enclosure is no greater than 42 inches in any dimension.
- 33 F. Related equipment for non-small wireless facilities.
- 34 1. Antenna and antenna elements must match the support structure color, finish, and
35 visually conceal all contents and/or wiring to the greatest extent possible.
- 36 2. Remaining equipment must be placed underground, or enclosed and screened through
37 stealth technology or fencing and landscaping in a screening buffer. The buffer
38 requirement shall be contained in a recorded easement. Vegetation shall not be
39 removed without approval by the department of community development. Fencing shall
40 be a nonobtrusive material such as a dark coated chain link to blend in with the
41 surroundings.
- 42 G. Standard of Care. Facilities shall be designed, constructed, operated, maintained, repaired,
43 modified and removed in strict compliance with all current applicable technical, safety and

- 1 safety-related codes, and all federal, state and county laws and regulations. These include
 2 without limitation the most recent editions of the following:
- 3 1. American National Standards Institute (ANSI) Code.
 - 4 2. National Electrical Safety Code.
 - 5 3. National Electrical Code.
 - 6 4. All aviation safety standards.
 - 7 5. All accepted and responsible workmanlike industry practices of the National Association
 8 of Tower Erectors or the Telecommunication Industry Association.
- 9 H. Wind and ice. Facility structures shall be designed to withstand the effects of wind gusts
 10 and ice. The design shall comply with the American National Standards Institute standard
 11 design prepared by the engineering departments of the Electronics Industry Association,
 12 and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- 13 I. Engineer signature. Construction documents for structures shall contain a seal and
 14 signature of a professional structural engineer, licensed in the State of Washington.
- 15 J. Interference. Facilities shall comply with Federal Communication Commission regulations
 16 regarding interference.
- 17 K. Radio frequency emissions. The proposed facility, in conjunction with other facilities, shall
 18 not generate radio frequency emissions that exceed the standards and regulations of the
 19 FCC. These regulations include at least the FCC Office of Engineering Technology Bulletin 65
 20 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio
 21 Frequency Electromagnetic Fields," as amended.
- 22 L. Agreement for facilities on County property. The applicant and the County shall execute an
 23 agreement to provide terms and conditions to locate a facility on County property. The
 24 agreement must:
- 25 1. Be completed prior to construction of the facility.
 - 26 2. Comply with the regulations in this chapter.
 - 27 3. Be submitted with the application for the facility.
 - 28 4. Address the following issues:
 - 29 a. Facilities are subject to the county's right to fix an annual fee for use and occupancy
 30 of the property.
 - 31 b. A financial security must be submitted to protect the county from the costs and
 32 expenses due to a failure to comply with the obligations in this chapter. The amount
 33 and form of the financial security shall be decided by mutual agreement. The
 34 amount of financial security shall be at least 150% of the cost of the facility unless
 35 otherwise agreed.
 - 36 c. Modifications requested by the county.
 - 37 i. The county may determine that a change to a facility in the ROW is reasonably
 38 necessary under the following circumstances:
 - 39 (a) To facilitate or accommodate the construction, reconfiguration, completion,
 40 repair, relocation, or maintenance of a public project within the ROW.
 - 41 (b) To accommodate the vacation of ROW or the release of a utility easement.
 - 42 (c) As required by applicable laws or to protect or preserve the public health,
 43 safety, or welfare.

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

18 **17.530.050 Regulations for non-tower and small wireless communication facilities**

- 19 A. Development regulations. Except as provided in Section 17.530.050(B) 'Development
 20 regulations in the public right-of-way (ROW)' and in addition to Section 17.530.040 'General
 21 Development Standards,' the following applies to all non-tower wireless communication
 22 facilities and small wireless facilities (facilities) for which an ACUP is required.
 23 1. Collocation. All facilities shall collocate on existing wireless support structures unless
 24 technologically infeasible, in which case the facility may locate on an existing pole or
 25 structure.
 26 2. Height. The total height of any facility after installation shall not exceed the maximum
 27 height permitted in the underlying zoning district, except where the following are met:
 28 a. The height will not exceed 20 feet above the roof surface.
 29 b. No visual impacts to surrounding properties occurs. Visual impact is measured from
 30 the ground or roof of an adjacent building.
 31 B. Development regulations in the public right-of-way (ROW). The following regulations apply
 32 to all non-tower and small wireless facilities located in the ROW and for which an ACUP is
 33 required. If any conflict exists between these regulations and those elsewhere in this
 34 chapter, the regulations herein shall control.
 35 1. Location.
 36 a. All facilities located in the right of way shall be located, designed, and installed to
 37 match the pole placement and bolt pattern identified by Kitsap County public works
 38 design standards.
 39 b. All facilities and related equipment in the ROW shall not cause any physical or visual
 40 obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians
 41 and/or motorists, or inconvenience public use of the ROW.
 42 c. All equipment more than four inches above the ground shall be placed outside of
 43 the clear zone or mitigated in accordance with the current edition of the County

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

19 **17.530.060 Regulations for tower-based wireless communication facilities**

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

1 iv. An agreement could not be reached with the owner of such building, structure, or
2 tower after a good faith effort.

3 2. Location.

4 a. The location of a tower-based facility that exceeds sixty feet in height and requires a
5 CUP shall be necessary to provide coverage or capacity for the gap shown in the
6 propagation study for the service area.

7 b. The location shall be the least visually intrusive to the surrounding community or
8 shall be the only viable location to provide coverage or capacity for a gap shown in a
9 propagation study, when required through section 17.530.030 E.3.

10 3. Height.

11 a. A tower-based facility shall be constructed to:

12 i. the minimum functional height when applicable. A propagation study, when
13 required through section 17.530.030 E.3., will state a minimum functional height
14 necessary for a tower-based facility to fill a gap in coverage or capacity.

15 ii. not exceed 40 feet taller than surrounding tree height.

16 iii. not exceed 200 feet.

17 b. Tower-based facilities over 40 feet in height shall be equipped with an anti-climbing
18 feature.

19 4. Related equipment.

20 a. Ground-mounted related equipment associated, or connected, with a tower-based
21 facility must be placed underground, or enclosed and screened through stealth
22 technology or fencing and landscaping in a screening buffer. The buffer requirement
23 shall be contained in a recorded easement. Vegetation shall not be removed without
24 approval by the department of community development. Fencing shall be a
25 nonobtrusive material such as a dark coated chain link to blend in with the
26 surroundings.

27 b. All related equipment, utility buildings and accessory structures shall be
28 architecturally and aesthetically designed to blend into the environment in which
29 they are situated and meet the minimum setback requirements of the underlying
30 zone.

31 5. Signs. Tower-based facilities shall post an easily visible emergency contact sign. The
32 sign shall include the name and phone number for a point of contact in case of an
33 emergency. No other sign is allowed except those required by the FCC or other federal
34 or state agencies.

35 6. Use of property and setbacks.

36 a. Sole use. A tower-based facility may be allowed as the only use on a parcel if:

37 i. The parcel is at least 6,000 square feet, and

38 ii. The distance between the base of the tower-based facility and the nearest
39 property line is at least 110% of the proposed height of the tower-based facility.

40 b. Combined use. A tower-based facility may be allowed with an existing use, or on a
41 vacant parcel in combination with another use, subject to the following minimum
42 conditions:

43 i. The non-facility use on the property is any allowed use in the zone, except
44 residential, and need not be affiliated with the facility.

- 1 ii. The lot:
- 2 (a) Complies with the dimensional requirements of the zone, and
- 3 (b) Is sufficiently sized to accommodate the tower-based facility and any
- 4 equipment buildings, security fences, buffers and setbacks.
- 5 iii. The minimum distance between the base of a tower-based facility and the nearest
- 6 property line is at least 110% of the proposed tower-based facility height or the
- 7 minimum setback of the underlying zone, whichever is greater.
- 8 7. Screening, Landscaping, and Fencing.
- 9 a. A tower-based facility disguised through stealth technology as a tree, natural
- 10 feature, or structure (e.g., silo, church steeple, or clock tower) that is compatible
- 11 with its surroundings and meets the requirements of 17.530.040 B 'Visual
- 12 Appearance' shall be exempt from the tower screening requirements in section
- 13 17.530.060 A.7.b and section 17.530.A.7.d. Related equipment screening
- 14 requirements still apply.
- 15 b. Tower-based facilities shall be screened with landscaping or other screening
- 16 features. This requirement applies to all associated equipment shelters, cabinets,
- 17 and other ground mounted related equipment.
- 18 c. Existing trees, shrubs, and other vegetation shall be preserved to the maximum
- 19 extent possible. Removal of existing vegetation requires prior approval from the
- 20 department. Existing vegetation used to screen shall provide, through size and
- 21 density, adequate, long-term screening. The existing vegetative buffer shall
- 22 surround the entire facility and be at least five feet wide.
- 23 d. Screening shall maximize coverage and visually cover at least 75% of the height of
- 24 the tower-based facility. Recommended species for screening of tower-based
- 25 facilities include Douglas fir, Big leaf maple, and Western redcedar. Planting height
- 26 shall be at least six feet for an evergreen tree or two-inch caliper for a deciduous
- 27 tree. Deciduous trees shall not exceed 25% of the trees used for screening. An
- 28 analysis of the Site Potential Tree Height at 50 years (SPTH (50)), based on soil types,
- 29 is required.
- 30 e. The Department may require additional screening to adequately screen adjacent
- 31 residential properties based on site specific conditions.
- 32 f. The department may allow a combination of existing vegetation, topography, walls,
- 33 decorative fences or other features instead of landscaping. The combination of
- 34 features must:
- 35 i. Achieve the same degree of screening.
- 36 ii. Be consistent with surrounding vegetation.
- 37 iii. Not obstruct or interfere with the use of the ROW or county work.
- 38 g. Screening requirements shall be recorded as a covenant running with the permit.
- 39 8. Access road. Tower-based facilities shall provide adequate emergency and service
- 40 access to the facility. An access road, turnaround space and parking shall be provided.
- 41 The access must:
- 42 a. Maximize to the extent practicable the use of existing public or private roads.
- 43 b. Match road grades to natural contours to minimize visual disturbance, soil erosion,
- 44 and stormwater impacts.

1 c. Where the access road is not owned by the applicant, a copy of an easement
2 authorizing the use of the access road shall be submitted to the County.

3 9. Parking. One tower-based facility requires at least one off-street parking space.

4 10. Future use. A proposed tower-based facility shall be designed structurally, electrically,
5 and in all respects to accommodate both the proposed antennas and comparable
6 antennas in the future.

7 B. Development regulations in the public right-of-way (ROW). The following additional
8 regulations apply to all tower-based facilities located in the ROW. If any conflict exists between
9 these regulations and those elsewhere in this chapter, the regulations herein shall control.

10 1. Location.

11 a. All facilities located in the right of way shall be located, designed, and installed to
12 match the pole placement and bolt pattern identified by Kitsap County public works
13 design standards.

14 b. Tower-based facilities are prohibited from locating in the ROW in front of the façade
15 of any structure facing the ROW.

16 c. Tower facilities and related equipment in the ROW shall not cause any physical or
17 visual obstruction to pedestrian or vehicular traffic, create safety hazards to
18 pedestrians and/or motorists, or inconvenience public use of the ROW.

19 d. All equipment exceeding four inches above the ground shall be placed outside of the
20 clear zone or mitigated in accordance with the current edition of the County Road
21 Standards. Ground-mounted related equipment, walls, or landscaping shall be
22 located at least eighteen inches from of the face of the curb, sidewalk or paved
23 pathway.

24 e. Unless approved by the County engineer, ground-mounted related equipment is
25 prohibited in a ROW when:

26 i. The ROW width is 50 feet or less.

27 ii. Exclusively single-family residential lots front both sides of the street.

28 2. Height. Tower-based facility height in the ROW shall not exceed 40 feet.

29 3. Design requirements. Ground-mounted related equipment that cannot be placed
30 underground shall be screened, to the fullest extent possible, through the use of
31 landscaping or other decorative features.

32 4. Construction. Time, Place and Manner. The county shall determine the time, place and
33 manner of construction, maintenance, repair and/or removal of all tower-based
34 facilities in the ROW based on public safety, traffic management, physical burden on the
35 ROW, and related considerations. All work shall be performed at the applicant's
36 expense.

37 5. Tree trimming. Tree trimming around facilities shall comply with industry standards.

38 Tree trimming activities that impact traffic require a traffic control plan approved by the
39 Department of Public Works. Trimming that involves a wireless support structure
40 requires submittal of written permission from the owner of the structure to the County.

41 The County shall not be liable for any damages, injuries, or claims arising from the
42 applicant's actions under this subsection.

43 **17.530.070 Maintenance and repair**

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

15 **17.530.080 Abandonment and Removal**

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

41 **Section 25.** Amends Kitsap County Code section 21.040.020 'Project Permit Application

42 Procedures - Applicability' as follows:

43 21.04.020 Applicability.

- 1 A. Unless otherwise provided, the regulations identified in this chapter shall apply to the
 2 following Kitsap County Code (KCC) provisions:
- 3 1. Sections 11.36.060(1) through (4), roads; and Section 11.22.070(a), roads;
 - 4 2. Title 12, Stormwater Drainage, Chapters 12.04 through 12.20 and 12.28 through Section
 5 12.32.090;
 - 6 3. Title 16, Land Division and Development;
 - 7 4. Title 17, Zoning, except Chapter 17.530 'Wireless Communication Facilities';
 - 8 5. Title 18, Environment;
 - 9 6. Title 19, Critical Areas Ordinance; and
 - 10 7. Title 22, Shoreline Master Program.
- 11 B. Building permits subject to the State Environmental Policy Act (SEPA) shall follow the
 12 procedures of this chapter. Building permits exempt from SEPA shall be subject to the
 13 procedures identified within Title 14. Procedures for review or interpretations of the
 14 provisions of the International Building Codes shall be governed by Title 14 and not this
 15 chapter.
- 16 C. As authorized by RCW 36.70B.140, site development activity permit applications submitted
 17 by the Kitsap County department of public works are exempt from the following sections:
- 18 1. Section 21.04.070. The department may, however, consider the content requirements
 19 for a decision as guidelines.
 - 20 2. Section 21.04.110.
 - 21 3. Section 21.04.175.
 - 22 4. Section 21.04.200.
 - 23 5. Section 21.04.210. Public works shall, however, provide its own early and continuous
 24 public notice of its county projects. The department will accept public comments
 25 submitted on each project up until the date of decision.
 - 26 6. Section 21.04.250.
- 27 D. Legislative Actions.
- 28 1. Nonproject-specific legislative actions (legislative actions), such as Comprehensive Plans,
 29 sub-area plans, area-wide amendments, and development regulations, shall be
 30 governed by the provisions of Chapter 21.08.
 - 31 2. Project-specific legislative actions (legislative project permits), such as development
 32 agreements, final plat approvals, plat alterations, plat vacations, and rezones that do
 33 not require Comprehensive Plan amendments, are governed by this chapter.
 - 34 3. Where a project permit application requires or proposes a nonproject legislative action,
 35 that action shall be processed first under Chapter 21.08 and all procedures of this
 36 chapter shall be suspended. Only upon completion of that process will the balance of
 37 the project permit application be processed under this chapter.
- 38 E. In the event of a conflict between this chapter and any other applicable process, unless
 39 specifically provided otherwise, the director shall, in his or her sole discretion, determine
 40 the appropriate regulation, considering the following principles:
- 41 1. State or federal provisions shall apply over local provisions;
 - 42 2. Specific provisions shall apply over general provisions; and
 - 43 3. Later enacted provisions shall apply over provisions enacted earlier.

- 1 F. Code Compliance and Project Permit Application Review Suspension. If an open and active
2 code compliance case exists on a parcel, and a proposed project permit application is
3 submitted for that parcel which may, in the department's interpretation, impact or be
4 impacted by the code compliance case, the project permit application may be suspended
5 until the resolution of the code compliance case.
- 6 G. Private Covenants and Restrictions. Except where required by local, state or federal law,
7 Kitsap County has no authority to enforce private covenants or restrictions. Compliance
8 with such private covenants or restrictions is a private matter. Property owners, potential
9 buyers or tenants, and project permit applicants are encouraged to review and be aware of
10 property covenants and restrictions.

11 **Section 26. Severability.** If any section, sentence, clause or phrase of this ordinance should
12 be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or
13 unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase
14 of this ordinance.

15 **Section 27. Clerical/Typographical Error.** Should this Ordinance, upon being enacted by the
16 Kitsap County Board of Commissioners during its deliberations on May 13, 2019, inadvertently
17 leave out or in error upon publication, the explicit action of the Board as discussed and passed
18 shall prevail upon subsequent review and verification by the Board.

19 **Section 28. Effective Date.** This ordinance shall take effect immediately upon adoption.

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21 ADOPTED this 10th day of June, 2019.

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BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

E. Wolfe

EDWARD E. WOLFE, Chair

NOT PRESENT

CHARLOTTE GARRIDO, Commissioner

Robert Gelder

ROBERT GELDER, Commissioner

6-10-19



ATTEST:

Dana Daniels

Dana Daniels, Clerk of the Board

APPROVED AS TO FORM:

John Nickel

Deputy Prosecuting Attorney

Unofficial