



January 17, 2014

Todd Stamm
 Planning Manager
 Community Planning & Development Dept.
 City of Olympia
 601 4th Ave E – PO Box 1967
 Olympia WA 98507-1967

**RE: Development Code Text Amendment
 OMC Chapter 18.44 and Definitions**

Dear Todd,

On behalf of AT&T, we ask that the City of Olympia amend its development code governing wireless communications facilities (WCFs) to achieve the following:

- Permit outright the attachment of concealed WCFs on City- and/or other publicly-owned property, wherever the property is located.
- Update the code to be more consistent with federal law, principally Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, and Washington's new SEPA exemption for wireless facilities, codified in RCW 43.21C.0384.

Together with the City's general land use application, we are submitting the enclosed proposed new text, a non-project SEPA checklist, and the City's fee of \$3,200. We did not include the City's other general submittal items (vicinity map, etc.) because they are not applicable to this proposal.

Attachment of Concealed WCFs on City-Owned Property

Throughout its plans and code, the City prefers that wireless facilities be located on City-owned and publicly-owned property. See *Wireless Telecommunications Master Plan* (March 24, 2006), page 46. The City's highest-priority siting alternative for WCFs is a concealed, attached facility located on City-owned property, and second-highest priority siting alternative is a concealed, attached facility located on publicly-owned property. In order to facilitate the development of more of such sites, we propose a new subsection for OMC 18.44.090 that will permit attachments to City- and/or other publicly-owned properties outright wherever the property is located (in any land use or overlay district). See enclosed proposed new OMC 18.44.090(C).

Consistency with Federal and State Law

In 2012, as part of the Middle Class Tax Relief and Job Creation Act, the federal government enacted a new law affecting modifications to wireless communications facilities. Section 6409 of the Act, which is called "Wireless Facilities Deployment," provides as follows:

Sec. 6409. WIRELESS FACILITIES DEPLOYMENT



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(a) FACILITY MODIFICATION.

- (1) IN GENERAL. Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government **may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.***
- (2) ELIGIBLE FACILITIES REQUEST. For purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves:*
 - (A) collocation of new transmission equipment;*
 - (B) removal of transmission equipment; or*
 - (C) replacement of transmission equipment.*
- (3) APPLICABILITY OF ENVIRONMENTAL LAWS. Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969. (Emphasis is added.)*

The Federal Communications Commission's Nationwide Collocation Agreement provides definitions for "substantial" change. These are discussed in the attached industry fact sheet and the January 25, 2013 FCC Public Notice with guidance from the Wireless Telecommunications Bureau.

Importantly, Section 6409 removes discretion from the City's review of the described modifications, and the City should now permit such modifications outright, rather than subjecting them to a conditional use permit.

Similarly, earlier this year, Washington's legislature adopted a new SEPA exemption for modifications to certain wireless facilities that relies on a test of whether the proposed change is substantial. See RCW 43.21C.0384. This new exemption also recognizes that many modifications to existing wireless facilities should be subject to a simplified approval process.

Consistent with these changes in the law, the enclosed proposed revised code contains a new subsection to permit certain modifications when the proposed change is not substantial. See proposed new Subsection (E) in OMC 18.44.100. At the same time, we propose clarifying how the City will review modifications by deleting the following categories of proposals: mitigation of existing facilities; expanding existing antenna arrays; and, antenna element replacements. See changes to OMC 18.44.090 and -.100. There is no compelling reason to continue to differentiate among varieties of modifications when defining the type of proposal so long as the code addresses whether any such modifications are substantial. In addition, the proposed new use table makes collocations, concealed attached WCFs, and ROW attached WCFs permitted outright except in the Historic category of locations. See Table 44.01. Section 6409 specifically includes collocations as modifications no longer subject to discretion, and many attached facilities should be considered under similar standards due to the similar impact caused by such attachments.



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Consistency Elsewhere in the OMC - Definitions

While AT&T's proposed code amendments do not necessitate any new definitions, for purposes of consistency, we suggest deleting several definitions from OMC 18.02.180, which are either not currently used in OMC 18.44 (Anti-climbing device, Handoff candidate, Wireless Telecommunications Master Plan) or will no longer be used in OMC 18.44 with our proposed changes (Antenna element and Mitigation, WFC).

Thank you for your consideration of these proposed text amendments. We look forward to working with the City to update its code and facilitate the development of the types of wireless projects the City prefers.

If you have any questions, feel free to contact me at (206) 227-0020 or at ken.lyons@wirelesscounsel.com.

Sincerely,

Ken Lyons
Jurisdictional Relations Director, PNW, LTE

Enclosures: General Land Use Application
 SEPA Checklist (Non-project)
 Proposed Text Amendments
 Application fee
 FCC Interpretation (January 25, 2013)
 Industry Fact Sheet (PCIA)

cc: Steve Friddle, Community Planning Manager, City of Olympia
 Jennifer Kenny, Associate Planner, City of Olympia
 Bob Bass, President, External Affairs – Washington, AT&T
 Carol Tagayun, Director, External Affairs – Washington, AT&T
 Geri Roper, Area Manager, AT&T C&E West
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