September 15, 2014

To: Members of the Olympia Planning Commission
Re: Proposed Amendments to Olympia's Wireless Communications Facilities (WCF) Regulations

Thank you for extending the comment period on the proposed amendments to Olympia's WCF regulations. First, I want to acknowledge the difficult work staff was asked to do on this challenging issue in a short period of time. This included working with community and industry interests and addressing what turned out to be a much longer and more complex list of questions than any of us working on this issue expected when AT&T made their text amendment request.

As I noted in my earlier testimony, staff's proposed amendments go well beyond what would be required to be responsive to AT&T and to come into compliance with changes in federal and state law. Instead staff is recommending a comprehensive and substantive rewrite of the City's WCF regulations. These include some new provisions that may be difficult to apply and enforce. In addition, these recommendations are being made in the context of an unsettled national debate over the definitions of many of the key terms and provisions of federal law. When the ink dries on the new rules for implementing the new federal statues, it will almost certainly require the City to amend its regulations again.

My intention is not to slow this process down unnecessarily. However, given the potential legal and community impacts of implementing staff's proposed new regulations, I don't think the community has been given adequate time to review and understand them and to explore and suggest alternatives. This is due in part to the lack of any explanation or analysis of staff's recommendations in the staff report prepared for the public hearing on September 8. In addition, there are no alternative options offered to address the wide ranging set of challenging questions raised by the proposed new regulations.

To deal with these questions, the OPC may want to postpone action on this item until it better understands the potential impacts – intended and unintended – of the significant changes staff is recommending. At a minimum, I encourage the OPC to recommend that the City continue to work with the CNA and other stakeholders to review and analyze staff's proposed changes and develop alternatives for City Council review before the Council is asked to take action.

Please contact me if you have any questions. Thank you for your attention.

Peter Guttchen
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Olympia, WA 98506
360-943-8578
pguttchen@gmail.com

Nancy Lenzi

From: Steve Friddle
Sent: Tuesday, September 16, 2014 9:47 AM
To: Nancy Lenzi
Subject: FW: As requested by Planning Commission: AT&T Comment on Proposed Wireless Code Amendments
Attachments: Olympia Proposed Code Amendments_A&T Comment.pdf; Olympia Proposed Code Amendments_A&T Comment.2.pdf

OPC WCF

From: Kristen Larson [mailto:kristen.larson@wirelesscounsel.com]
Sent: Monday, September 15, 2014 7:04 PM
To: Amy Buckler
Cc: Ken Lyons; TAGAYUN, CAROL; Steve Friddle
Subject: As requested by Planning Commission: AT&T Comment on Proposed Wireless Code Amendments

Good evening Amy,

At its 9/8/14 meeting, the Olympia Planning Commission left the record open until midnight 9/15/14 to submit comment on amendments to the City's wireless code proposed for the Planning Commission's consideration, and asked that AT&T submit comment on proposed amendments by this deadline. Attached for the Planning Commission's consideration, please find comments by Busch Law Firm PLLC on behalf of AT&T. Given the size of the code document, our comments are divided into four pdf documents, among two email messages. This is email 1 of 2. Email 2 of 2 follows directly.

We appreciate your assistance in distributing the attached to the Commissioners. Please don't hesitate to contact me if I can answer any questions or provide further information.

Best,
Kristen.
--
Kristen J. Larson
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September 15, 2014

Mr. Todd Stamm
Planning Manager
Community Planning & Development Department
City of Olympia
601 4th Ave E – P.O. Box 1967
Olympia, WA 98507-1967

Re: AT&T Zoning Code Text Amendment Application

Dear Mr. Stamm:

On behalf of AT&T, Busch Law Firm PLLC submitted a brief, targeted OMC Chapter 18.44 code amendment application to the City in January 2014, to accomplish the following:

- Permit attached, concealed WCFs on publicly-owned property; and
- Ensure consistency with federal law governing WCFs, 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.

Since then, the City Community Planning & Development Department, in coordination with a City legal consultant, has proposed much more extensive, broad amendments to OMC Chapter 18.44, which target all facets of the City's wireless permitting process. On behalf of AT&T, we now offer the following comments on the City's proposal, as of the September 8, 2014 Planning Commission public hearing.

I. Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012: Modifications of Existing WCFs

Federal Section 6409 removes discretion from the City's review of "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," so that the City "shall approve" such a request. Currently, City ordinances are not consistent with this 2012 change in federal law, as recognized by the Department and the City's legal consultant. Because there is no discretion, we encourage the City to amend the code to

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conserve staff time and resources by ensuring a very efficient process for these modifications of existing facilities, in accord with federal law.

We also recommend that the City amend the code to ensure a predictable, reliable process that provides for a faster, stronger, more reliable wireless network, on which City services and economic development increasingly depends. Nationwide, 43 percent of households do not have a landline and use wireless only for communication, and an additional 32 percent use wireless with only a back-up landline. Households, government, and businesses increasingly rely on wireless services to work from home, stay competitive, and contact emergency services. With the advent of smartphones and related wireless data services ((Internet, photos, instant messaging, text alerts, mapping and navigation software, and the wide variety of apps), data usage on AT&T's network has increased more than 50,000 percent over the last 6 years. As new technology is deployed to meet demand, a predictable, reliable, efficient process for modifications to existing WCFs is needed to ensure seamless, strong, fast, and reliable voice and data coverage over time to those that work and live in Olympia.

To do so, we recommend that OMC 18.44.090 be amended to permit modifications of existing WCFs consistent with federal s.6409 in any zone or overlay district; that OMC 18.44.100.D ("Development Standards") be amended to set forth a definition of "substantial change" consistent with federal s.6409 and with recent 2013 changes to Washington State's SEPA law; that OMC 18.44.110.A ("Approval Process", or "Permit Review Process" as proposed to be amended by the Department) be amended to set forth application requirements for an efficient review process, where requests to modify existing WCFs would be subject only to Department administrative review. Corresponding definitions within OMC 18.02.180 should also be amended to reflect proposed changes to OMC 18.44.090, 18.44.100, and 18.44.110. These recommendations on behalf of AT&T are set forth in the attached document, in which specific deletions to the City's code amendment proposal, as of the September 8, 2014 Planning Commission public hearing, are indicated by ~~strikethrough text~~ and specific additions are indicated by <u>underlined text</u>.

II. Siting of New WCFs

The City's code amendment proposal, as of the September 8, 2014 Planning Commission public hearing, makes great strides toward setting forth a process for siting new WCFs that reflects the current needs and uses of wireless technology, including the use of wireless technology for voice and data coverage. Over time, new WCFs may be needed to add network capacity to meet increased demand, or to provide coverage to new areas not previously served by a wireless carrier.

To ensure seamless, strong, fast, and reliable voice and data coverage over time to those that work and live in Olympia, we encourage the City to amend the code for a predictable, efficient process responsive to the needs and uses of wireless technology,

including voice and data, and community engagement to date. For example, the City Heritage Commission recommended at its June 24, 2014 meeting that the code be amended to allow new WCFs be allowed within historic districts or properties with a conditional use permit, subject to federal Secretary of the Department of Interior's Standards. Thus, we recommend that OMC 18.44.080, OMC 18.44.090, OMC 18.44.100, and OMC 18.44.110 be amended to reflect an appropriate, predictable, and efficient siting alternatives hierarchy in step with the Heritage Commission recommendation. We also recommend that OMC 18.44.080, OMC 18.44.090, OMC 18.44.100, and OMC 18.44.110 be amended to provide for the possibility of small cell, which is a new technology that is not a substitute for traditional WCFs but may be suitable to increase coverage and capacity within only very limited areas, approximately one or two city blocks in size. Finally, we recommend that OMC 18.44.080, OMC 18.44.090, OMC 18.44.100, and OMC 18.44.110 be amended to revise otherwise confusing, outdated, or duplicative code requirements.

These recommendations on behalf of AT&T are set forth in the attached document, in which specific deletions to the City's code amendment proposal, as of the September 8, 2014 Planning Commission public hearing, are indicated by ~~strikethrough text~~ and specific additions are indicated by <u>underlined text</u>.

We deeply appreciate the suggestions, time, and effort of City staff, City Commissions, and City neighborhood association members in meetings concerning proposed code changes, and look forward to continued work together upon review and consideration of the proposal.

Respectfully submitted,

Kristen J. Larson
Busch Law Firm PLLC

Busch Law Firm PLLC Response to Department's Proposed Amendments, on behalf of AT&T:

(AT&T's recommended changes to Department's proposed amendments indicated in green highlight)

ORDINANCE NO. _

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING THE OLYMPIA MUNICIPAL CODE RELATING TO WIRELESS COMMUNICATION FACILITIES; AMENDING SECTIONS 18.02.180(A)(E)(G)(P)(R)(S)(W), 18.04.060(DD)(1)(i), 18.06.060(Z)(2)(g), 1842.080(H), 18.44, 18.72.120(F), 18.77.010(H), TABLES 18.04, 18.06, 18.08 AND 78.01 OF THE OLYMPIA MUNCIPAL CODE.

WHEREAS, the Federal Telecommunications Act of 1996 (the "Act") was designed to remove regulatory barriers and encourage competition among all type of communications; and

WHEREAS, the Act ratifies the authority of local governments to regulate telecommunications and carriers within certain limits; and

WHEREAS, the Act authorizes the Federal Communications Commissions ("FCC") to preempt any local government regulation which prohibits, or has the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services; and

WHEREAS, Chapter 5 of the City of Olympia Comprehensive Plan contains policies and goals concerning Utilities, including privately-owned utilities such as electric power, natural gas, cable television, and telecommunications facilities; and

WHEREAS, Comprehensive Plan Goal U 5 encourages the City to "minimize adverse impacts of above-ground utility facilities on surrounding land uses;" and

WHEREAS, Comprehensive Plan Policy U 5.1 provides that "private utility facilities should be located near compatible adjacent land uses. City regulations will specify that approval of new private utility facilities shall be reasonably compatible with the development of the surrounding property;" and

WHEREAS, Comprehensive Plan Policy U 5.2 requires the City's zoning code to "include standards that ensure that new private utility facilities shall be coordinated and integrated with

surrounding land uses so as to be reasonably compatible with the natural or built environment. These regulatory standards shall encourage facility design which minimizes the visual intrusion of facilities in all areas;" and

WHEREAS, Comprehensive Plan Policy U 5.3 states that the City will "encourage telecommunication utilities to co-locate existing structures, such as existing towers and buildings, where feasible;" and

WHEREAS, Comprehensive Plan Goal U 8 calls on the City "to encourage participating in the siting decisions of utility facilities within their community;" and

WHEREAS, to implement Goal U 8, Policy U 8.1 provides that "community input, including responses from affected neighborhood groups, should be solicited prior to City or County approval of private utility facilities which may significantly impact the surrounding community;" and

WHEREAS, Congress, the Federal Communications Commissions ("FCC") and the Washington State Legislature have recently amended regulations related to wireless communication facilities ("WCF"s) that will require amendments to OMC; and

WHEREAS, the City of Olympia values and desires to support the presence of telecommunications services within its corporate boundaries, but believes that both Olympia citizens and telecommunication providers would be best served if new telecommunications facilities were designed and located so as to serve providers' needs while at the same time addressing health, safety and/or aesthetic concerns; and

WHEREAS, the proposed amendments set forth, in order of priority, siting criteria for the location of new WCFs; and

WHEREAS, the priority siting criteria serves several purposes, including but not limited to: (1) encouraging co-location on publicly-owned sites for which conditional use permits have already been issued for WCFs, hereby reducing the visual and other impacts from such new facilities; (2) providing sufficient sites to address wireless communication coverage needs, given that property owned by the City of Olympia is well-distributed around the City in areas in which coverage is or will be needed; (3) facilitating location of wireless communication on properties that are both already developed with existing structures (such as water towers or field light standards) that are tall enough to facilitate addition of wireless communication antennae but also have sufficient room for ground-mounted power facilities; (4) providing sites on which successful and innovative screening techniques can be demonstrates; (5) provide and additional mechanism (i.e., lease terms) by which aesthetics, co-location, and site maintenance can be addressed; and

WHEREAS, the Olympia City Council wishes to adopt the proposed amendments to address new federal and state regulations, facilitate provision of wireless communications services, address (where possible) the concerns of the public, and comply with the requirements of the federal Telecommunications Act of 1996; and

WHEREAS, Busch Law Firm PLLC, on behalf of AT&T, submitted an application to the City's Department of Community Planning and Development to amend Olympia Municipal Code (OMC) 18.44; and

WHEREAS, the staff of the City's Department of Community Planning and Development reviewed the proposed amendment, obtained input from members of the public and wireless communications company representatives, and prepared alternative draft revisions and recommended their approval; and

WHEREAS, the City of Olympia's Heritage Commission reviewed the proposed revisions to the WCF section and provided recommendations at their May 28, 2014 and developed recommended criteria at the June 25, 2014 meeting; and

WHEREAS, the Olympia Planning Commission received a briefing on April 21, 2014, conducted a public hearing on proposed amendment on September ___-, 2014 and thereafter directed _____ to the proposed amendments and recommended the City Council adopt the amendments; and

WHEREAS, the Olympia City Council, on _____, 2014, in regular session, considered the record and recommendations of the City's Heritage Commission, Planning Commission; the report and recommendations of the Department of Community Planning and Development; the AT&T application for text changes to the WCF code; the memorandum from Chris Bacha with the law firm Kenyon Disend, PLLC, regarding the proposed amendments to the WCF code; the Federal Communications Commission's Notice of Proposed Rulemaking ("NPRM"), released September 26, 2013, and titled, "In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Practices"; the comments of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the National League of Cities, and the United States Conference of Mayors; the comments filed by Best, Best & Krieger, LLPC on behalf of various cities and organizations in Virginia, Texas, Washington, Massachusetts, California, Maryland, New York, Florida; comments filed by CTIA – The Wireless Association; and other relevant authorities and filings; and

WHEREAS, the Olympia City Council received a briefing from staff, the City's consultant, the Heritage Commission, Planning Commission and moved to adopt certain recommendations of the heritage Commission, Planning Commission and directed staff to prepare an ordinance consistent with Council direction upon the record;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

The Olympia City Council hereby approves and adopts the following amendments to the Olympia Municipal Code.

Section 1. Findings. Based upon the foregoing, the City Council finds that,

1. Title VI (Title VI – "Public Safety Communications and Electromagnetic Spectrum Auction") of the ""Middle Class Tax Relief and Job Creation Act of 2012"" (the "Act") (PL-112-96; codified at 47 U.S.C. § 1455(a)) includes provisions at Section 6409 (hereafter "Section 6409") affecting applications to the City of Olympia for modification of an existing wireless communication tower or base station;

2. Section 6409 provides that the City 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, and defines eligible facilities request as, 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. In September of 2013 the FCC adopted and released a Notice of Proposed Rulemaking ("NPRM"), which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409;

4. Comments in response to the NPRM have been submitted to the FCC by both wireless communication service providers, and related special interest organizations, and by state and local governments, and related special interest organizations;

5. The City Council shares the views of other state and local governments that, although our community wants and needs robust broadband services and increasing the number of WCFs placed in the City is necessary to meet these wants and needs, the siting of WCFs is challenging and deployment of wireless facilities at all costs can trample community values and threaten public safety, and deployment must be sensible and utilize best practices;

6. The City Council encourages the collocation of antennas upon antenna support structures, ROW attached structures, buildings, and other structures already being utilized as attached WCFs using a collaborative approach and best practices in order to encourage and

facilitate deployment of WCFs while protecting public health and safety, reasonably limiting environmental and aesthetic impacts and preserving historic districts; and

Section 2. Chapter 18.44 of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Chapter 18.44
ANTENNAS AND WIRELESS COMMUNICATIONS FACILITIES

18.44.000 Chapter Contents

Sections:

18.44.020 Purpose and Intent

The purposes and intent of this chapter are to:

A. Promote the safety and general welfare of the public by regulating the siting of antennas and wireless communication facilities (WCFs), to the extent allowed to local governments under federal law.

B. Minimize the impacts of antennas and WCFs on surrounding areas by establishing standards for location, structural integrity~~,~~ and compatibility.

C. Encourage the location and collocation of WCFs on existing structures, thereby a) minimizing new visual, aesthetic, and public safety impacts, b) minimizing effects upon the natural environment and wildlife, and c) reducing the need for additional antenna support structures.

D. Accommodate the growing need and demand for wireless communication services.

E. Encourage coordination between site suppliers and wireless communication services providers.

F. Establish predictable and balanced codes governing the construction, ~~and~~ location, replacement, collocation and removal of WCFs, within the confines of permissible local regulations consistent with State and Federal laws and regulations.

G. Establish review procedures to ensure that applications for WCFs are reviewed and acted upon within a reasonable period of time.

H. Respond to the policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to prohibit or have the effect of prohibiting personal wireless services.

I. Emphasize concealed (stealth) technologies to protect the character of the City while meeting the demand for wireless communications services.

J. Encourage the use of ~~public~~ existing WCF sites, as well as existing buildings and structures, as locations for WCFs~~,~~ prior to establishing new wireless facility sites.

K. Ensure consideration of and compatibility with the goals and objectives of the Comprehensive Plan for Olympia and the Olympia Growth Area.

18.44.040 Applicability - Types of Facilities and Actions

Except as provided in Section 18.44.060 (Exempt Installations), and within such modification allowed under chapter 18.37 OMC, this chapter shall apply to WCF development activities including attachment, installation, construction, replacement, maintenance, repair, or modification of the following types of WCFs:

A. Existing antenna support structures and buildings or other structures with attached WCF.

B. Proposed antenna support structures.

C. Publically or privately owned sites with antenna support structures.

~~D. Replacement of existing antenna support structures.~~

~~E~~D. Collocation or Combining on antenna support structures.

~~F~~E. Attached WCFs.

~~G~~F. Concealed WCFs.

G. Freestanding WCFs.

H. ROW attached structure.

I. Small cell facilities.

~~H.~~ J. AM/FM/TV/HDTV or other similar broadcasting transmission facilities.

~~I.~~K. Satellite earth stations that are over one meter (39.37 inches) in diameter in all residential districts and over two meters (78.74 inches) in all other zoning districts.

L. Ham and amateur radio operated facilities (See OMC 18.44.100(G)).

18.44.060 Exempt Installations

This chapter shall not apply to the following WCF development activities: installation, construction, replacement, or modification of the following facilities; notwithstanding any other provisions contained in Title 18 OMC, the Unified Development Code:

A. Amateur radio operator antennas.

B. Satellite earth stations that are one meter (39.37 inches) or less in diameter in all residential districts and two meters (78.74 inches) or less in all other zoning districts.

C. Government-owned WCFs, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City designee; except that such

facilities must comply with all federal and state requirements. No WCF shall be exempt from the provisions of this chapter beyond the duration of the state of emergency.

D. Temporary, commercial WCFs, upon the declaration of a state of emergency by federal, state, or local government, or determination of public necessity by the City and approved by the City; except that such facilities must comply with all federal and state requirements. Said WCFs may be exempt from the provisions of this chapter up to three (3) months after the duration of the state of emergency.

E. Routine maintenance and repair of existing WCFs, excluding structural work or changes in height or dimensions of antennas, antenna support structures, or buildings; provided that, the WCF received approval from the City of Olympia or Thurston County for the original placement, construction, or subsequent modification, or the facility is an existing nonconforming facility. Antenna element replacements are permitted provided the new antennas will have the same area or less of those removed. The total number of antennas must remain the same. Additional base station equipment may be placed within an approved equipment compound, provided the height of the additional base station equipment does not extend above the screening fence.

18.44.080 Siting Alternatives Hierarchy

A. Siting of a new WCF (as herein defined) shall be in accordance with Section 18.44.090(A & B), Table 44.01 - Permitted Wireless Communications Facilities by Zoning District, and with the following siting alternatives hierarchy:

~~1.~~ 1. New Concealed Attached WCF on existing structures (such as buildings, water towers).

~~a. On City-owned property or rights-of-way of the City so designated as City Property.~~

~~b. On other publicly-owned property or ROW.~~

~~c. On privately-owned property.~~

~~2. Collocated or combined on existing Antenna Support Structure Facility.~~

~~a. On City-owned property or rights-of-way of the City so designated as City Property~~

~~b. On other publicly-owned property or ROW~~

~~c. On privately-owned property~~

~~4~~ 2. New Concealed Freestanding WCF

~~a. On City-owned property or rights-of-way of the City so designated as City Property~~

~~b. On other publicly-owned property or ROW~~

~~c. On privately-owned property~~

~~3~~ 3. New ROW-Attached WCF Mounted on Existing or Replacement Utility Pole, Electricity Transmission Tower, or Light Post

~~a. On City-owned property or rights-of-way of the City so designated as City Property.~~

~~b. On other publicly-owned property or ROW.~~

~~c. On privately-owned property.~~

4. New Non-concealed Attached WCF

~~a. On City-owned property or rights-of-way of the City so designated as City Property.~~

~~b. On other publicly-owned property or ROW.~~

~~c. On privately-owned property.~~

~~6~~5. New Non-concealed Freestanding (mono-pole or lattice tower) WCF:

~~a. On City-owned property or rights-of-way of the City so designated as City Property~~

~~b. On other publicly-owned property or ROW.~~

~~c. On privately-owned property.~~

6. Critical Areas and Historic Properties and Districts (subject to Heritage Commission recommendation pursuant to Secretary of the Interior Standards).

B. For ~~attached, collocated or combined~~, a new concealed attached, or concealed freestanding WCF that requires a conditional use permit, ~~ROW attached WCFs~~, the order of ranking preference, highest to lowest, shall be from 1 to 2 ~~1c in alphabetical order, then likewise from 2a to 2c, 3a to 3c, and 5a to 5c~~. Where a lower ranked alternative is proposed, the applicant must file relevant information as indicated in the application requirements for WCFs including, but not limited to, a statement by the applicant's radio frequency engineer demonstrating that despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranked options are not technically feasible, practical or justified given the location of the proposed WCF.

C. Where a new ROW attached or new non-concealed attached ~~freestanding~~ WCF is ~~permitted~~ requires a conditional use permit, the order of ranking preference, highest to lowest, shall be from 3~~a to 4c in alphabetical order, then likewise from~~ to 4 ~~6a to 6c~~. Where a lower ranked alternative is proposed, the applicant must file relevant information as indicated in the application requirements for WCF including, but not limited to, the existing land uses of the subject and surrounding properties within 300 feet of the subject property, and a statement by the applicant's radio frequency engineer demonstrating that despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranked options 1, 2, and 3 are not technically feasible, practical, or justified given the location of the proposed WCF.

D. Where a new non-concealed freestanding, or critical areas and historic properties or districts WCF requires a conditional use permit, the order of ranking preference, highest to lowest, shall be from 5 to 6. Where a lower ranked alternative is proposed, the applicant must file relevant information as indicated in the application requirements for WCFs including, but not limited to, the existing land uses of the subject and surrounding properties within 300 feet of the subject property, and a statement by the applicant's radio frequency engineer demonstrating that despite diligent efforts to adhere to the established hierarchy

within the geographic search area, higher ranked options 1, 2, 3, 4 and 5 are not technically feasible, practical, or justified given the location of the proposed WCF as follows:

1. The proposed WCF is needed to address unmet coverage, capacity, or technology needs of the applicant, and

2. The proposed WCF is designed and located to be the least intrusive means of meeting those needs, in consideration of the regulations set forth in this chapter and the Comprehensive Land Use Plan.

~~D.~~ E. Applicants are encouraged to locate on publically owned sites. However, ~~T~~this section shall not be interpreted to require applicants to locate on publicly owned sites when lease negotiation processes are prohibitively lengthy or expensive relative to those of the private sector. The applicant is considered justified in selecting a lower-ranked privately-owned property option if the local government fails to approve a memorandum of agreement or letter of intent to lease a specified publicly-owned site within one-hundred twenty (120) days of the application date, or if it is demonstrated that the proposed lease rate for the specified public-owned site significantly exceeds the market rate for comparable privately-owned sites.

18.44.090 Permitted Wireless Communication Facilities by Zoning District

A. Generally: Table 44.01, Permitted Wireless Communication Facilities by Zoning District, identifies types of WCFs which are permitted outright (P) subject to administrative staff review, or subject to a Conditional Use Permit (C), or prohibited (N)~~, or prohibited (N)~~

~~B. Historic districts and properties: Table 44.01 also identifies types of Wireless Communications Facilities permitted outright (P), subject to a Conditional Use Permit (C), or prohibited (N) in National Historic Districts, or on local, state, or Federal historic register properties,~~ depending on the Zoning District Group (as defined within Table 44.01) wherein the site is located. Right of way, except for the specifically delineated ROW attached structure, shall be considered part of the immediately adjacent zoning district for purposes of this section.

B. WCF Modification: A WCF Modification, that does not substantially change the physical dimensions of the existing WCF, is permitted (P) in any zone or overlay district. A WCF Modification, that does substantially change the physical dimensions of the existing WCF, shall be processed in accord with underlying existing WCF type as set forth in OMC 18.44.080 and in OMC Table 44.01.

C. Small cell facility: Small cell facilities and equipment and small cell facility upgrades are permitted (P) in any zone or overlay district.

Nancy Lenzi

From: Steve Friddle
Sent: Tuesday, September 16, 2014 9:46 AM
To: Nancy Lenzi
Subject: FW: As requested by Planning Commission: AT&T Comment on Proposed Wireless Code Amendments
Attachments: Olympia Proposed Code Amendments_A&T Comment.3.pdf; Olympia Proposed Code Amendments_A&T Comment.4.pdf

FOR OPC WCF

From: Kristen Larson [mailto:kristen.larson@wirelesscounsel.com]
Sent: Monday, September 15, 2014 7:05 PM
To: Amy Buckler
Cc: Ken Lyons; TAGAYUN, CAROL; Steve Friddle
Subject: Re: As requested by Planning Commission: AT&T Comment on Proposed Wireless Code Amendments

Email 2 of 2, documents attached.

Thank you,
Kristen.
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From: Kristen Larson <kristen.larson@wirelesscounsel.com>
Date: Monday, September 15, 2014 at 7:04 PM
To: "abuckler@ci.olympia.wa.us" <abuckler@ci.olympia.wa.us>
Cc: Ken Lyons <ken.lyons@wirelesscounsel.com>, "TAGAYUN, CAROL" <ct1417@att.com>, Steve Friddle <sfriddle@ci.olympia.wa.us>
Subject: As requested by Planning Commission: AT&T Comment on Proposed Wireless Code Amendments

Good evening Amy,

At its 9/8/14 meeting, the Olympia Planning Commission left the record open until midnight 9/15/14 to submit comment on amendments to the City's wireless code proposed for the Planning Commission's consideration, and asked that AT&T submit comment on proposed amendments by this deadline. Attached for the Planning Commission's consideration, please find comments by Busch Law Firm PLLC on behalf of AT&T. Given the size of the code document, our comments are divided into four pdf documents, among two email messages. This is email 1 of 2. Email 2 of 2 follows directly.

We appreciate your assistance in distributing the attached to the Commissioners. Please don't hesitate to contact me if I can answer any questions or provide further information.

Best,
Kristen.
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Kristen J. Larson
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Table 44.01 PERMITTED WIRELESS COMMUNICATION FACILITIES BY ZONING DISTRICT

Zoning District Group	~~Antenna Element Replacement~~ WCF Modification (Not Substantial Change)	**NEW CONCEALED** Attached WCF	**NEW CONCEALED** Freestanding WCF	~~Collocated or Combined on Existing WCF~~	ROW Attached Structure	~~Mitigation of Existing WCF~~	~~Expanding Existing Antenna Array~~	**NEW NON-CONCEALED** Attached WCF	**NEW NON-CONCEALED** Freestanding WCF
Group 1. INDUSTRIAL ZONES (I, LI)	P	P	P	~~P~~	P	~~P~~	~~P~~	P	~~P~~ P
Group 2. COMMERCIAL ZONES (AS, CSH, DB, GC, HDC-3, HDC-4, MS, UC, UW)	P	P	P	~~P~~	P	~~P~~	~~P~~	C	~~N~~ C
Group 3. MIXED USE ZONES (PUD, PO/RM, RMU, UR, UW-H)	P	P	C	~~P~~	P	~~C~~	~~C~~	N	N
Group 4. NEIGHBORHOOD ZONES (COSC, HDC-1, HDC-2, MHP, MR 7-13, MR 10-18, NC, NR, NV, R1/5, R4, R4-8, R6-12, RLI, RM-18, RM24, RMH, UV)									

Table 44.01 PERMITTED WIRELESS COMMUNICATION FACILITIES BY ZONING DISTRICT

Zoning District Group	~~Antenna Element Replacement~~ WCF Modification (Not Substantial Change)	**NEW** CONCEALED Attached WCF	**NEW** CONCEALED Freestanding WCF	~~Collocated or Combined on Existing WCF~~	ROW Attached Structure	~~Mitigation of Existing WCF~~	~~Expanding Existing Antenna Array~~	**NEW** NON-CONCEALED Attached WCF	**NEW** NON-CONCEALED Freestanding WCF
	P	C	C	~~C~~	C	~~C~~	~~C~~	N	N
NATIONAL HISTORIC DISTRICTS and LOCAL, STATE, OR FEDERAL REGISTER PROPERTIES and CRITICAL AREAS									
Groups 1-3	P	C	C	~~C~~	C	~~C~~	~~C~~	N	N
Group 4	P	~~N~~ C	~~N~~ C	~~N~~	~~N~~ C	~~N~~	~~N~~	N	N
SITES WITHIN 300 FEET OF GROUP 4 - NEIGHBORHOOD ZONES									
Groups 1-3	P	C	C	~~C~~	C	~~C~~	~~C~~	N	N

Table 44.01 PERMITTED WIRELESS COMMUNICATION FACILITIES BY ZONING DISTRICT

Zoning District Group	~~Antenna Element Replacement~~ WCF Modification (Not Substantial Change)	**NEW CONCEALED** Attached WCF	**NEW CONCEALED** Freestanding WCF	~~Collocated or Combined on Existing WCF~~	ROW Attached Structure	~~Mitigation of Existing WCF~~	~~Expanding Existing Antenna Array~~	**NEW NON-CONCEALED** Attached WCF	**NEW NON-CONCEALED** Freestanding WCF

P – Permitted C - Conditional Use Permit N- Not Permitted

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18.44.100 Development Standards

A. Generally.

1. Applicability - Development Standards: Unless otherwise specified within this chapter, all development standards of the zoning district within which the WCF is located shall apply. Where permitted as provided in Sections 18.44.090 (Permitted Wireless Communications Facilities by Zoning District) and 18.44.080 (Siting Alternatives Hierarchy), the following development standards apply to all new, collocated, or combined wireless facility installations. Where any critical areas (see Chapter 18.32), historic (see Chapter 18.12) or scenic view areas (see Section 18.110.060) or corridor plans also apply, the most restrictive standards shall govern. Subsection A shall not apply to small cell facilities.

~~2~~ 2. Equipment cabinets: Cabinets shall not be visible from public view. Cabinets may be provided within a building, behind a screen on a rooftop, on the ground within the fenced-in and screened equipment compound, or in the case of historic properties and districts, screened subject to Heritage Commission recommendation pursuant to Secretary of the Interior Standards. Ground compounds or cabinets shall be maintained free of graffiti. The~~Maintenance shall be borne by the~~ WCF carrier or land owner shall provide the City with a plan for efficient graffiti removal and apportioning removal cost within ~~60~~-days of actual notice by the city to the WCF carrier and land owner of existence of graffiti on ground compounds or cabinets owned by the WCF carrier and placed on the land owner's property. ~~Thereafter, the city may cause removal of the graffiti with costs being borne by the WCF carrier and/or the property owner.~~

~~3~~ 3. Fencing: All equipment compounds shall be enclosed with a sight-obscuring wood/brick/masonry fence or wall. Fencing shall be subject to the requirements of Subsection 18.40.060(C) Fences/Hedges, Unified Development Code.

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~~4~~ 4. Buffers: Any WCF, located in any zone, that is proposed to be installed within three-hundred (300) feet of a Group 4 neighborhood zone as categorized in Section 18.44.090 Table 44.01 Permitted Wireless Communications Facilities by Zoning District shall be subject to the same Section 18.44.090 standards as if being located within a neighborhood zone.

~~5~~ 5. Landscaping Requirements: Antenna support structures and WCF equipment compounds shall be subject to the requirements of Chapter 18.36 Landscaping and Screening.

~~6~~ 6. Signage:

a. The only signage that is permitted upon a non-concealed antenna support structure, equipment cabinet, or fence shall be informational, and for the purpose of identifying the antenna support structure (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable).

b. Where signs are otherwise permitted, a WCF may be concealed inside such signage, provided that all applicable standards for both the signage and the concealed WCF are met.

~~7~~ 7. Lighting:

a. Lighting is not allowed on WCFs, ~~if~~ unless required by the Federal Aviation Administration (FAA), and shall not exceed the FAA minimum standards. Any lighting required by the FAA must be of the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) allowable by the FAA to minimize the potential attraction to migratory birds. Dual lighting standards are required and strobe light standards are prohibited unless required by the FAA. The lights shall be oriented so as not to project directly onto surrounding ~~residential~~ property, consistent with FAA requirements.

b. Any security lighting for on-ground facilities and equipment shall be in compliance with Title 18 OMC, Unified Development Code.

c. Ground lighting used to respectfully illuminate the American flag on a concealed WCF flagpole shall be permitted subject to Title 18 OMC, Unified Development Code.

~~8~~ 8. Compliance with federal standards for interference protection: Any applicant for facilities under this section shall certify that such proposed facility shall comply with all applicable federal regulations regarding interference protection.

~~9~~ 9. Compliance with FCC standards: In order to protect the public from excessive exposure to electromagnetic radiation, the WCF applicant shall certify through a written statement that the facility meets or exceeds FCC regulations for exposure to electromagnetic radiation.

~~10~~ 10. Abandonment:

a. WCFs and the equipment compound shall be removed, at the owner's expense, within one hundred eighty days (180) days of cessation of use, unless the abandonment is associated with a replacement antenna structure, in which case the removal shall occur within one hundred eighty days (180) days of the installation of the replacement antenna structure.

b. An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The City may extend the time for removal or reactivation up to ninety (90) additional days upon a showing of good cause. If the antenna support structure or antenna is not removed in a timely fashion, the City may give notice that it will contract for removal within sixty (60) days following written notice to the owner. Thereafter, the City may cause removal of the antenna support structure with costs being borne by the current WCF or land owner.

c. Upon removal of the WCF, the equipment compound and at ground foundations including two feet below ground level, the development area shall be returned to its natural state and topography and vegetation shall be consistent with the natural surroundings or consistent with the current use of the land at the time of removal. The cost of rehabilitation shall be borne by the current WCF or land owner.

B. Attached Wireless Communication Facilities.

1. Generally.

a. Height: Subject to OMC 18.44.100.D, the top of the attached WCF shall not be more than eighteen (18) feet above the existing or proposed building or structure.

b. Setbacks: An attached WCF and its equipment compound shall be subject to the setbacks of the underlying zoning district. Antennas may extend a maximum of twenty-four (24) inches into the setback. However no antenna or portion of any structure shall extend into any easement other than a utility easement.

c. Least visually obtrusive profile: Feed lines and antennas shall be designed to architecturally match the facade, roof, wall, or structure on which they are affixed so that they blend with the existing structural design, color, and texture. New antennas shall use the least visually obtrusive profile that will meet the network objectives of the desired coverage area. The visual obtrusiveness of the profile of an unobtrusive antenna or antenna array is ranked from least to most obtrusive as follows:

i. Flush-mounted antenna or antenna array

ii. Unconcealed single omni-directional (whip) antenna

2. Attached non-concealed WCFs.

a. Allowable locations: Shall only be allowed on a building, on existing non-concealed antenna support structures and, where the applicant has an agreement with the applicable property owner, utility or other authority that exercises jurisdiction over the subject right of way, on electrical distribution poles, transmission towers, and existing ball park light poles, subject to approval of the property owner, designated staff or other appropriate agency designee and/or the utility company.

b. Equipment compound or cabinets: Equipment compounds or cabinets for WCFs under this subsection shall be designed and located in such a manner as to not interfere with the subject right of way, ~~or~~ its primary utilization or reduce pedestrian walkability/accessibility.

3. ROW attached structures.

a. Allowable locations: Shall only be allowed on utility poles where the applicant has an agreement with the applicable utility or other authority that exercises jurisdiction over the subject right of way, subject to approval of the designated staff or other appropriate agency designee and/or the utility company.

b. Equipment compound or cabinets: Equipment compounds or cabinets for WCFs under this subsection shall be designed~~and~~ and screened or concealed in such a manner as to not interfere with the subject right of way, ~~or~~ its primary utilization, or reduce pedestrian walkability/accessibility. Depending on site conditions, the review authority may require placement on private property to provide for traffic safety, pedestrian access, or other right-of-way utilization requirements.

c. Separation distance: ROW attached structures shall be designed to provide sufficient separation distance between utility pole elements.

C. Freestanding Wireless Communication Facilities.

1. Generally.

a.

a. Designed for concealed collocation: All new freestanding WCF shall be designed for maximum technically feasible or practical collocation installations.

b. Designed for non-concealed collocation: All new ~~or mitigated~~ freestanding WCFs up to 80 feet in height shall be engineered and constructed to accommodate no less than three (3) antenna arrays. All WCFs between eighty-one (81) feet and one hundred twenty (120) feet shall be engineered and constructed to accommodate no less than four (4) antenna arrays.

c. Least visually obtrusive profile: New freestanding antenna support structures shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape and adjacent properties. New freestanding WCFs shall be designed to match adjacent structures and landscapes with specific design considerations such as architectural designs, height, scale, color, and texture. New antennas shall use the least visually obtrusive profile that will meet the network

objectives of the desired coverage area. See Section 18.44.100(B)(1)(c) for ranking of obtrusiveness of visual profiles.

d. Grading: Grading shall be minimized and limited only to the area necessary for the new WCF as approved by the Department of Community Planning and Development.

e. Safety: All support structures shall be certified to comply with the safety standards contained in the Electronics Industries Association /Telecommunications Industries Association (EIA/TIA) document 222-F, or current standard, "Structural Standards for Steel Antenna Towers and Supporting Structures," or current standard, as amended, by a Registered State of Washington Professional Engineer.

2. Freestanding concealed WCFs.

a. Height:

i. Subject to OMC 18.44.100.D, in all zoning districts where permitted, the maximum height shall be limited to one hundred twenty (120) feet.

ii. All height limits shall exclude lightning rods or lights required by the FAA that do not provide any support for antennas.

b. Setbacks: A concealed freestanding WCF and its equipment compound shall be subject to the setbacks of the zoning district and shall not be any closer to an adjoining property line than the proposed facility is to any dwelling unit on the property on which it is proposed to be located.

3. Freestanding non-concealed WCFs.

a. Antenna support structure: Freestanding non-concealed WCFs shall be limited to either a lattice type or a monopole type antenna support structures unless the applicant successfully demonstrates that such design is not feasible to accommodate the intended uses.

b. Height:

i. In all zoning districts where permitted, the initial maximum height shall be limited to one hundred twenty (120) feet. Thereafter, subject to OMC 18.44.100.D, the maximum cumlative height, subject to subsection "c" (Setbacks) below, may be increased, by not more than ten percent of the height of the Antenna Support Structure at the time of its initial installation, or by an amount up to one hundred fifty (150) in height, whichever is the lesser amount.

ii. All height limits shall exclude lightning rods or lights required by the FAA that do not provide any support for antennas.

c. Setbacks: A non-concealed freestanding WCF and its equipment compound shall be subject to the regulations applicable to the underlying zoning district, except where the minimum setback distance for an antenna support structure from any property line or public right-of-way is less than the height of the proposed antenna support structure. In that case:

i. If the antenna support structure has been constructed using breakpoint design technology as defined in Section 18.02.180 Definitions, the minimum setback distance shall be equal to 110 percent of the distance from the top of the structure to the breakpoint level of the structure, plus the minimum setback distance. For example, on a 100-foot tall monopole with a breakpoint at 80 feet, the minimum setback distance would be 22 feet (110 percent of 20 feet, the distance from the top of the monopole to the breakpoint) plus the minimum setback for that zoning district. Certification by a Registered Professional Engineer licensed by the State of Washington of the breakpoint design and the design's fall radius must be provided together with the other information required herein from an applicant.

ii. If the antenna support structure has not been constructed using breakpoint design technology, the minimum setback distance shall be equal to the height of the proposed antenna support structure.

iii. However, in all instances, the minimum setback distance from any residentially zoned property, shall at least meet the minimum setback of said residential zoning district.

d. Least visually obtrusive profile:

i. New antenna support structures shall maintain a galvanized gray finish or other approved contextual or compatible color, except as required by federal rules or regulations.

ii. New antennas shall be flush-mounted, unless it is demonstrated through RF propagation analysis that flush-mounted antennas will not meet the network objectives of the desired coverage area.

~~4. Mitigation of existing freestanding WCFs.~~

~~a. Determination of need: WCF mitigation shall accomplish a minimum of one of the following: reduce the number of WCFs, replace an existing WCF with one that is less visually obtrusive, or replace an existing WCF with a new WCF to improve network functionality resulting in compliance with this ordinance.~~

~~b. Height: The height of a WCF approved for mitigation shall not exceed one hundred and fifteen (115) percent of the height of the tallest WCF that is being mitigated up to a maximum of one hundred twenty (120) feet.~~

~~c. Setbacks: A new WCF approved for mitigation of an existing WCF shall not be required to meet new setback standards so long as the new WCF and its equipment compound are no closer to any property lines than the WCF and equipment compound being mitigated. For example, if a new WCF is replacing an old one, the new one is allowed to have the same setbacks as the WCF being removed, even if the old one had nonconforming setbacks.~~

~~d. Buffers: The proposed WCF equipment compound shall be landscaped as outlined in Paragraph 18.44.100(1)(e) herein.~~

~~e. Least visually obtrusive profile: Mitigated antenna-supporting structures shall be configured and located in a manner that minimizes adverse effects on the landscape and adjacent properties, with specific design considerations as to height, scale, color, texture, and architectural design of the buildings on the same and adjacent lots. New antennas shall use the least visually obtrusive profile that will meet the network~~

~~objectives of the desired coverage area. See Paragraph 18.44.110(2)(a)(iii) for ranking of obtrusiveness of visual profiles.~~

D. WCF ~~Collocated or Combined Facilities~~ Modification.

1. Generally.

a. Buffers: The proposed WCF equipment compound shall be landscaped as outlined in Paragraph 18.44.100(1)(e) herein.

b. Substantial Change: As used in this Chapter, the phrase substantially change the physical dimensions, or any similar derivation thereof, shall mean:

i. The WCF Modification, including replacement of an existing WCF, would, together with any attached antenna, increase the height of the existing antenna support structure, ROW attached structure, or building or structure with an attached WCF, by more than 10% or by 20 feet, whichever is greater, except that, the mounting of the proposed antenna may exceed the size limits set forth in this subsection by the minimum height necessary to avoid interference with existing antennas; or

ii. The WCF Modification, including replacement of an existing WCF, would increase the height of an ancillary structure, existing equipment cabinet or equipment compound by more than 10% or by 20 feet, whichever is greater;

iii. The WCF Modification, including replacement of an existing WCF, would involve the installation of more than one new equipment shelter compared to existing equipment shelters; or

iv. The WCF Modification, including replacement of an existing WCF, would involve adding an antenna element or other appurtenance to the antenna support structure, ROW attached structure, building or structure with an attached WCF, or base station, that would protrude from the edge of the Antenna Support Structure, ROW attached structure, or building or structure with attached WCF, more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater; or

v. The WCF Modification, including replacement of an existing WCF, would, together with any prior modifications to the existing antenna support structure or base station authorized pursuant to this section, exceed any of the limitations set forth in section i – iv.

~~b. Height: A collocated or combined WCF shall not increase the height of an existing antenna support structure by more than twenty (20) feet, and not to exceed forty-five (45) feet above the allowable building height or a total of one hundred twenty (120) feet, whichever is less.~~

c. Setbacks:

i. ~~A collocated or combined WCF, its equipment compound, and any ancillary equipment~~ WCF Modifications shall be subject to the setbacks of the underlying zoning district.

ii. When a ~~collocated or combined WCF is to be located~~ WCF Modification is made to ~~on~~ a nonconforming building or structure, then the existing permitted nonconforming setback shall prevail.

d. Visibility: New replacement, collocated and combined antennas shall maintain the design of the existing WCFs, unless it is demonstrated that maintaining the design will not meet the network objectives of the desired coverage area.

E. Small Cell Facilities. Small cell facilities and small cell facility upgrades shall be designed to be as visually unobtrusive as possible while accommodating necessary equipment and advances in technology. Small cell facilities may be placed aboveground and located in a power or utility easement, including on existing or replacement utility poles or on existing or replacement light poles. Small cell equipment may be placed aboveground and shall be designed to be as visually unobtrusive as possible while accommodating necessary equipment and advances in technology.

F. Satellite Earth Stations.

1. Residential installations. The following provisions apply to satellite earth stations with dish antennas greater than one meter (39.37 inches) in diameter serving single family and multifamily structures with four (4) or less units. Satellite earth stations serving more users

are classified as commercial installations, and are subject to Section (2) below. [NOTE: satellite earth stations may require a building permit depending on location and placement.]

a. Conditions. Residential satellite earth stations are permitted uses in all districts subject to the following conditions and all other applicable requirements.

i. Satellite earth stations shall be placed in the area bounded by side yard setback lines, the rear wall line of the primary structure and a line four (4) feet inside the lot measured from the rear property line.

ii. Satellite earth stations permitted under this section shall be restricted to those of mesh type construction, or of solid construction when smaller than eight and one-half (8-1/2) feet in diameter, and should blend as much as possible with the background.

iii. Permitted satellite earth stations shall not exceed a height of fifteen (15) feet above the average grade.

b. Variance Standards. Variances from the location and material construction standards of this section shall be reviewed by the Hearing Examiner in accord with Chapter 18.66 (Variances and Unusual Uses) and shall also be subject to the following requirements:

i. The satellite earth station shall be located on the portion of the site where it will be the least visually obtrusive when viewed from adjacent streets and neighboring properties.

ii. Antennas may be required to be screened with a combination of fencing, landscaping, structures or topography which will block the view of the antenna as much as practicable from adjoining property and rights-of-way. Such screening shall be solid (ninety (90) percent or more opaque) to the level of the center of the dish.

2. Commercial installations. Satellite earth stations used in conjunction with commercial, nonresidential uses, and multifamily housing with five (5) or more units are subject to the following requirements:

a. Roof-mounted satellite earth stations shall be located so as to be visually unobtrusive. Antennas over twelve (12) feet in diameter shall be screened to a height of three (3) feet above ground level or the center of the dish, whichever is greater. The design and material composition of the screening shall be compatible with the building design.

b. Satellite earth stations placed on buildings listed on the National or State Register of Historic Places or the Olympia Heritage Register shall not be visible from fronting or flanking streets.

c. Ground-mounted satellite earth stations shall be located in service areas outside of any required landscaping or front and side yard setback area. Additionally, satellite earth stations shall not be placed in the area between the front setback line and the structure. Screening shall be provided with a combination of fencing, landscaping, structures or topography. The screening shall block the lower (90) percent of the antenna, or reach a height of eight (8) feet, whichever is less. Whenever possible, satellite earth stations shall not be visible from neighboring residential areas.

d. No message or identification other than the manufacturer's identification is allowed to be portrayed on satellite earth stations and such identification shall not exceed ten (10) percent of the antenna's surface area.

F. Radio, Television, and Other Communication Towers, Except Wireless Communication Facilities.

1. Essential Public Facilities. Radio, television, and other communication towers shall meet the requirements of Sections 18.04.060(W).

2. Conditional Use Requirements. The following requirements apply to all radio, television, and other communication towers subject to conditional use approval, except WCFs.

a. Plans. The applicant shall submit complete plans showing the elevations and locations of the buildings and structures, together with locations of buildings and pertinent topographic features and adjoining properties. Approval of such plans shall be contingent upon compatibility with surrounding properties.

b. Nuisances. Rotary converters, generating machinery, or other equipment that would cause noise, electrical interference or similar disturbances beyond the property line are prohibited.

c. Storage. Outdoor storage of motor vehicles or materials is prohibited.

d. Screening. The site shall be screened; however, if the facility is entirely enclosed within a building, landscaping is sufficient. (See Chapter 18.36, Landscaping and Screening.)

G. Ham and Amateur radio operator antennas; *In order to reasonably accommodate licensed amateur radio operators as required by Federal Code of Regulations, 47 CFR Part 97, as amended, and Order and Opinion (PRB-1) of the Federal Communication Commission of September, 1985, and RCW 35A.21.260, a licensed amateur radio operator may locate WCFs in any zoning district, not to exceed the height requirements of the applicable zoning district, provided the following requirements are met for such WCFs located in a residentially zoned district at the time of building permit application:*

1. The antenna support structure and any WCFs located thereon shall not have any lights of any kind on it and shall not be illuminated either directly or indirectly by any artificial means;

2. No advertising logo, trademark, figurines, signs or other similar marking or lettering shall be placed on the antenna support structure or WCFs mounted or otherwise attached thereto or any building used in conjunction therewith unless as required by federal regulations;

3. Antenna support structures shall not be leased or rented to commercial users and shall not otherwise be used for commercial purposes; and

4. All antenna support structures must meet all applicable state and federal statutes, rules and regulations; including meeting zoning district heights and obtaining a building permit from the City.

18.44.110 ~~Approval~~ Permit Review Process

All ~~approvals~~ permits are subject to the review processes outlined in ~~Title 18~~ OMC 18.72, 18.77, 18.78 & 18.82 ~~Unified Development Code~~. Additionally, in accordance with Table 44.01 in Section 18.44.090 Permitted Wireless Communications Facilities by Zoning District, the following approval process shall apply:

A. New WCFs and WCF Modifications.

1. Any application submitted pursuant to this section shall be reviewed by City staff for completeness pursuant to OMC 18.77 and the following:

a. Plans. The applicant shall submit complete plans showing the elevations (including existing facilities, proposed new facilities, facilities to be removed, stealth technology or concealment methods, if any) and locations of the buildings and structures, together with locations of buildings and pertinent topographic features and setbacks from adjoining properties.

b. Service Area. For a new concealed attached or new concealed freestanding WCF, the application shall comply with OMC 18.44.080.B. For a new ROW attached or new non-concealed attached WCF, the application shall comply with OMC 18.44.080.C. For a new non-concealed freestanding, critical areas and historic properties or districts WCF, the application shall comply with with OMC 18.44.080.D.2. This subsection shall not be applicable to an application for a WCF Modification or small cell facility.

c. The plans shall include information as to feasibility of future co-locations. This subsection shall not be applicable to an application for a WCF Modification or small cell facility.

d. Nuisances. Rotary converters, generating machinery, or other equipment that would cause noise, electrical interference or similar disturbances beyond the property line are prohibited.

e. Screening Ground Equipment. Proposed ground mounted equipment screen (enclosed within a building or fencing and landscaping. (See also Chapter 18.36, Landscaping and Screening.)

f. Owner(s) Consent. The application shall include a written statement whether or not the proposal is authorized by the property owner. This subsection shall not be applicable to an application for a WCF Modification.

g. The time line for WCF facilities to be removed when replaced or abandoned shall be 180-days.

h. WCF Modification Determination. The City Community Planning & Development Department shall review an application for a WCF modification and determine if the proposed modification will substantially change the physical dimensions.

2. The city may consider a consolidated application for a small cell network, or any portion of a small cell network, as an alternative to individual permitting for each small cell facility in a small cell network. The consolidated application shall be reviewed in a single administrative review process that includes review of all required land use permits for all sites within the proposed small cell network. If a consolidated application is approved, any small cell facility upgrade within the approved small cell network shall be reviewed in a single administrative process that includes review of all required permits.

3. If any required item fails to be submitted, the application shall be deemed incomplete. Staff shall advise an applicant in writing within twenty eight (28~~0~~) business days after submittal of an application regarding the completeness of the application. If the application is incomplete, such notice shall set forth the missing items or deficiencies in the application, which the applicant must correct and/or submit in order for the application to be deemed complete.

4~~2~~. Within twenty (20) days of receiving a timely response from an interested potential co-applicant, the applicant shall inform the respondent and the City in writing as to whether or not the potential collocation or combining is acceptable and under what conditions. If the collocation or combining is not acceptable, then the applicant must provide the respondent and the City written justification as to why the collocation or combining is not feasible.

B. Supplemental Review.

The City reserves the right to require a supplemental review for any type of WCF, subject to the following:

1. Due to the complexity of the methodology or analysis required to review an application for a WCF, the City may require a technical review by a third party expert radio frequency engineer approved by the City, with input by the Applicant concerning pricing of third party review services, to demonstrate that despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranked options are not technically feasible, practical, or justified given the location of the proposed new WCF pursuant to OMC 18.44.080(D). ~~t~~ The costs of which shall be borne by the applicant and be in addition to other applicable fees.

2. The applicant shall submit the required fee as published in the City's current fee schedule, and the third party radio frequency engineer approved by the City if third party review is required.

3. Based on the results of the expert review, the approving authority may require changes to the applicant's application or submittals.

4. The supplemental review may address any or all of the following:

a. The accuracy and completeness of the application and accompanying documentation.

b. The applicability of analysis techniques and methodologies.

c. The validity of conclusions reached.

d. Whether the proposed WCF complies with the applicable approval criteria set forth in this Chapter including the determination of need pursuant to OMC 18.44.080(D).

e. Other items deemed by the City to be relevant to determining whether a proposed WCF complies with the provisions of the Olympia Municipal Code.

C. Routine maintenance, pursuant to OMC 18.44.060(E) requires a building permit and compliance with this Chapter 18.44 as determined by the Director.

~~C~~ D. Post Construction Field Testing. Within thirty days of becoming fully operational, all facilities shall be field tested by a third party reviewer, at the applicant's expense, to confirm the theoretical computations of RF emissions.

18.44.120 Interference with Public Safety Communications

Whenever the City has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by one or more WCFs, the following steps shall be taken:

A. The City shall provide notification to all WCF service providers operating in the jurisdiction of possible interference with the public safety communications equipment. Upon such notification, the owners shall use their best efforts to cooperate and coordinate with the City and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Best Practices Guide," released by the FCC in February 2001, including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time.

B. If any WCF owner fails to cooperate with the City in complying with the owner's obligations under this section or if the FCC makes a determination of radio frequency interference with the City public safety communications equipment, the owner who fails to cooperate and/or the owner of the WCF which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the City for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the jurisdiction to determine the source of the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in the "Best Practices Guide" within twenty-four (24) hours of the City's notification.

Section 3. Section 18.02.180(A) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Antenna. Any apparatus designed for the transmitting and/or receiving of electromagnetic waves, including but not limited to: telephonic, radio or television communications. Types of elements include, but are not limited to: omni-directional (whip) antennas, sectionalized (panel) antennas, multi or single bay (FM and TV), yagi, or parabolic (dish) antennas (See also Wireless Communication Facilities).

Antenna Array. A single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

Antenna Element. Any antenna or antenna array.

Antenna Element Replacement. The replacement of equal number and size of antennas.

Antenna Support Structure. A vertical projection composed of metal or other material with or without a foundation that is designed for the express purpose of accommodating antennas at a desired height. Antenna support structures do not include any device used to attach antennas to an existing building. Types of support structures include the following:

> Guyed Structure. A style of antenna support structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building.
>
> Lattice Structure. A tapered style of antenna support structure that consists of vertical and horizontal supports with multiple legs and cross bracing, and metal crossed strips or bars to support antennas.
>
> Monopole Structure. A style of freestanding antenna support structure consisting of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of antenna support structure is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground or on a building's roof.

Section 4. Section 18.02.1280(C) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Collocation. The practice of installing and operating multiple wireless carriers, service providers, and/or radio common carrier licensees on the same antenna support structure or attached wireless communication facility using different and separate antenna, feed lines and radio frequency generating equipment; and, the practice of mounting or installation of additional antenna or an antenna array on an existing antenna support structure, attached WCF, building or structure

capable of supporting wireless service facilities for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Section 5. Section 18.02.180(E) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Equipment Cabinet, WCF. Any structure above the base flood elevation (including cabinets, shelters, pedestals, and other similar structures) used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

Equipment Compound, WCF. The fenced area surrounding the ground-based WCF including the areas inside or under the following: an antenna support structure's framework and ancillary structures such as equipment necessary to operate the antenna on the WCF that is above the base flood elevation including: cabinets, shelters, pedestals, and other similar structures.

Existing Antenna Support Structure. An antenna support structure that, at the time an application for review is submitted pursuant to OMC Chapter 18.44, is being utilized by a wireless provider as a location for the transmission and/or reception of radio frequency signals or for other wireless communications; provided that, such antenna support structure was a legal conforming use at the time of construction and installation.

Existing Base Station. A base station that, at the time an application for review is submitted pursuant to OMC Chapter 18.44, is being utilized by a wireless provider for the transmission and/or reception of radio frequency signals or for other wireless communications; provided that, such base station was a legal conforming use at the time it was constructed or installed, except for expansions of nonconforming uses allowed by chapter 18.37 OMC. A "base station" consists of radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics, and includes a structure that currently supports or houses an antenna, transceiver, or other associated equipment.

Information only. No change Section to be added if amended. Section 18.02.180(G) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Geographic Search Ring. An area designated by a wireless provider or operator for a new base station or other wireless technology, produced in accordance with generally accepted principles of wireless engineering.

Section 6. *Section 18.02.180(H) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:*

Ham and Amateur radio operator antennas. *WCFs for the receiving and sending of amateur radio devices or HAM radios; provided that, the WCFs meet the height requirements of the applicable zoning district and are owned and operated by a federally licensed amateur radio station operator or are used exclusively for receive only antennas.*

Section 7. Section 18.02.180(M) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

~~Mitigation, WCF. A modification of an existing antenna support structure to increase the height, or to improve its integrity, by replacing or removing one or several antenna support structure(s) located in proximity to a proposed new antenna support structure in order to encourage compliance with this ordinance or improve aesthetics or functionality of the overall wireless network.~~

Information only No change Section to be added if amended Section 18.02.180(P) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Personal Wireless Service. Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996 and 47 U.S.C. 332 and future amendments thereof.

Public Building. Any building, structure, facility, or complex used by the general public, whether constructed by any state, county, or municipal government agency or instrumentality or any private individual, partnership, association, or corporation, including, but not limited to, assembly buildings, such as auditoriums, libraries, public eating places, schools, and theaters; business buildings, such as offices; and factories and industrial buildings.

Public Facility. Land, buildings or structures operated by a municipal or other governmental agency to provide local protective, social, recreational, cultural, or mass transportation services directly to the general public. This includes police and fire stations, libraries, recreation facilities, bus transfer stations and park-and-ride lots. It also includes public land or buildings devoted solely to the storage of equipment and materials. It does not include facilities whose primary purpose is to provide administrative or judicial services, except as they may be incidental to the defined use, nor parking lots that are accessory to uses that would otherwise not be allowed in the underlying zone.

Public Safety Communications Equipment. All communications equipment utilized by a public entity for the purpose of ensuring the safety of the citizens of the City and operating within the frequency range of
700 MHz and 1,000 MHz and any future spectrum allocations at the direction of the FCC.

Information only No change Section to be added if amended Section 18.02.180(R) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Radio Frequency Emissions. Any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, antenna support structure, building, or other vertical projection.

Radio, Television, or Communication Tower. A vertical structure that is intended to send or receive radio, or other wireless communications and to serve more than one user or an enterprise whose principal business is such communications. See Antenna.

Section 8. Section 18.02.180(S) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Satellite Earth Station. A single or group of parabolic (or dish) antennas that are mounted to a support device that may be a pole or truss assembly attached to a foundation in the ground, or in some other configuration. A satellite earth station may include the associated separate equipment cabinets necessary for the transmission or reception of wireless communications signals with satellites.

Section 9. Section 18.02.180(T) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

Transmission Equipment. Radio or other equipment necessary for the transmission or reception of wireless communication signals, including, for example, the antenna element, radio, and feed lines. Transmission equipment does not include structures that support or house the transmission equipment such as the equipment compound, equipment cabinet or antenna support structure.

Section 10. Section 18.02.180(W) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

WCF Modification. This term shall mean and collectively include any of the following activities, (i) any change in the exterior dimensions, or replacement, or removal of, an existing antenna support structure or related ancillary structure, a ROW attached structure, an existing base station, transmission equipment, an equipment cabinet, or an equipment compound, except changes which are not substantial changes as set forth in OMC 18.44.100.D.1.b; (ii) the collocation, addition or combining of an antenna element on an existing antenna support structure, a ROW attached structure, or a building or structure with an attached WCF, and (iii) the collocation or combining of a base station with an existing base station.

Wireless Communication Facility (WCF). Any staffed or unstaffed location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennas, transmission cables, and equipment cabinets, and may include an antenna support structure. The following developments shall be deemed a WCF: developments containing new or existing antenna support structures, public antenna support structures, replacement antenna support structures, collocation on existing antenna support structures, attached wireless communications facilities, concealed wireless communication facilities, and non-concealed wireless communication facilities. Excluded from the definition are: non-commercial amateur radio, amateur ham radio and citizen band antennas, satellite earth stations and antenna support structures, and antennas and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities.

Specific types of WCFs include (See also Antenna):

Attached WCF. An antenna or antenna array that is secured to an existing building or structure other than an antenna support structure - including light standards, transmission towers, utility poles, or the like - together with a) any accompanying pole or device which attaches it to the building or structure, b) transmission cables, and c) an equipment cabinet, which may be located either on the roof or inside/outside of the building or structure. An attached WCF is considered to be an accessory use to the existing principal use on a site. (See also Freestanding WCF).

Concealed WCF, sometimes referred to as a stealth or camouflaged facility. A WCF, ancillary structure, or WCF equipment compound that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site. There are two types of concealed WCFs: 1) attached and 2) freestanding. 1) Examples of concealed attached facilities include, but are not limited to the following: painted antenna and feed lines to match the color of a building or structure, faux windows, dormers or other architectural features that blend with an existing or proposed building or structure. 2) Concealed freestanding WCFs usually have a secondary, obvious function which may be, but is not limited to the following: church steeple, windmill, bell tower, clock tower, light standard, flagpole with or without a flag, or tree. (See also Non-concealed WCF.)

Freestanding WCF. Any staffed or unstaffed location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennas, feed lines, and equipment cabinets, and may include an antenna support structure. A freestanding WCF includes, but is not limited to the following: guyed, lattice, or monopole antenna support structures. (See also Attached WCF.)

Non-concealed WCF. A WCF that is readily identifiable as such and can be either freestanding or attached. (See also Concealed WCF.)

ROW Attached Structure. A special case of an attached WCF, this is defined as a pole or other structure primarily used as an electrical transmission support structure for electrical, telephone, cable, or other wired services that can be or has been configured to support the antenna(s) and feedlines of one or more wireless service providers for use as a WCF.

Small Cell Facilities A small cell facility may consist of one or more radio transceivers, antennas, interconnecting cables, power supply, other associated electronics, and equipment, which are attached to a structure and meet the parameters in subsections (a) and (b). For purposes of these definitions, volume is a measure of the exterior displacement, not the interior volume of the enclosures.

a) Small Cell Antenna: Each antenna shall be no more than three (3) cubic feet in volume.

b) Small Cell Equipment: Each equipment enclosure shall be no larger than seventeen (17) cubic feet in volume. Associated conduit, mounting bracket or extension arm, electric meter, concealment, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, and cut-off switch may be located outside the primary equipment enclosure(s) and are not included in the calculation of equipment volume.

c) Small Cell Facility Upgrade: The addition of a new small cell facility, the removal of an existing small cell facility, or the replacement of an existing small cell facility.

Wireless Communications. Any personal wireless service, which includes but is not limited to: cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), and unlicensed spectrum services utilizing devices described in Part 15 of the FCC rules and regulations (e.g., wireless internet services and paging).

Information only No change Section to be added if amended . Section 18.04.060(DD)(1)(i) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

d. Temporary, commercial wireless communications facilities, for the purposes of providing coverage of a special event such as news coverage or sporting event. Such facilities must comply with all federal and state requirements. Temporary wireless communications facilities may be exempt from the provisions of Chapter 18.44 up to one week after the duration of the special event.

Information only No change Section to be added if amended Section 18.06.060(Z)(2)(g) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

g. Temporary, commercial wireless communications facilities, for the purposes of providing coverage of a special event such as news coverage or sporting event. Such facilities must comply with all federal and state requirements. Temporary wireless communications facilities may be exempt from the provisions of Chapter 18.44 up to one week after the duration of the special event.

Information only No change Section to be added if amended . Section 18.42.080(H) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

H. Attaching commercial messages to wireless communication facilities for off-site and on-site advertising shall be prohibited.

Section 11. Section 18.72.120(F) of the Olympia Municipal Code and ordinances related thereto are hereby amended to read as follows:

F. Application Time Limits.

PLANNING APPLICATION TYPE	**TIME LIMIT**
Environmental Review (SEPA Checklist and Assessment	90-days
Environmental Impact Statement (draft)	365-days
Short Plats	90-days
Land Use Approval	120-days
Preliminary Plat (10 or more lots)	~~90~~ 120-days
Preliminary Planned Residential Development	~~90~~ 120-days
Final Planned Residential Development	30-days

Final Plat	30-days
Conditional Use Permit	120-days
Conditional Use Permit – New WCF	120-days
New WCF (not requiring a CUP)	90-days
WCF Modification	30-days
Variance	90-days
Shoreline Substantial Development Permit	120-days
Shoreline Exemptions	90-days
Time Extension or Modification	90-days
Boundary Line Adjustment	90-days
Appeal to Hearing Examiner	90-days

ENGINEERING PERMIT APPLICATION TYPE	**TIME LIMIT**
Short Plat	120-days
Long Plat	120-days
Utility Extension (in-city)	120-days
Commercial	120-days
Multifamily	120-days

BUILDING PERMIT APPLICATION TYPE	**TIME LIMIT**

New Single-family Residential	30-days
Residential Addition/Remodel	30-days
New Multifamily	120-days
New Commercial	120-days
Commercial Addition/Remodel	120-days

[…]

Comments and Suggested Revisions to the Staff Changes to Section 18.44 of the Olympia Municipal Code

I. Background

The Staff has responded to a request by ATT to amend the city code based on the changes found in the Middle Class Tax Relief and Job Creation Act, PL 112-96 (the 2012 Act). This 2012 Act includes a short provision requiring the approval of minor (non-substantial) changes to existing towers and base stations. These minor (non-substantial) changes (referred to as eligible facilities requests) relate to the following situations ("covered changes"):

- Collocation of new transmission equipment
- Repair of existing transmission equipment
- Replacement of transmission equipment

II. Staff Position

Concerning the 2012 Act, the staff has largely accepted ATT's proposal by adopting the specific language from the Staff Notice which is attached as Appendix A. Collocations and transmission equipment changes are permitted in every zone in the city and applications for covered changes will be processed promptly.

III. Analysis of the Proposed City Ordinance

A. The City Ordinance should not be changed until the Meaning of Key Terms is Settled by the FCC

Before ordinances should be changed, the city needs clear and final definitions from the Federal Government of what constitutes an "existing tower", a "base station", what electronic equipment is "transmission equipment" and finally, what is a "substantial change" to an existing tower or base station. The FCC does not define the terms in the existing regulations issued under the Telecommunications Act of 1996; overlap between these terms is responsible for much of the confusion that surrounds this law. For example, does transmission equipment consist of an antenna which receives or transmits signals or does the definition include supporting equipment like power supplies or cabling? If we start adding all of the supportive equipment to an antenna, does this become really a base station as opposed to just transmission equipment? Does an existing tower allow for demolition of an existing tower and construction of a new tower if necessary to support the covered changes? Where the FCC refers to a transceiver, how does that fit into the 2012 Act?

The FCC recognized the problem and issued some preliminary guidance (DA 12-2047) on January 15, 2013, which refers to a National Collocation Agreement issued in 2009 (see Appendix A). However, this guidance is merely advisory; the scope and meaning of each of these terms is a major part of the proposed rule issued on 12/5/2013. The FCC has asked if the public wants a broad functional definition of a base station, tower, or transmission equipment or a more narrow technical decision based on the specific electronic equipment being used. The FCC also notes that too many prescriptive standards could impede innovation by locking in standards based on existing technology for wireless facilities. The FCC has not published a firm date or issuing final regulations.

Adopting any changes to local law would be premature until final FCC rules are issued. Also, if the FCC changes direction, it would be necessary to repeal one statute and replace it with another. In the interim period, applications can be handled on a case by case basis.

B. Substantially of the Change Is Also Uncertain and Ambiguous

The FCC guidance indicates that substantiality can be inferred if any one of these following circumstances occurs:

- Heights increase by 10% or the height of one additional antenna array with a cap of 20 feet but these limits can be exceeded if antenna interference occurs
- The number of cabinets is higher than "standard" for that technology but no greater than four
- An appurtenance which protrudes from the tower more than 20 feet or the tower width at the location of the appurtenance, whichever is greater but these limits can be exceeded to protect the antenna from weather
- Excavation is needed outside the current tower site as defined by property or utility boundaries

Virtually all of these rules have exceptions, caps or exclusions and it is hard to imagine that localities can determine whether the number of cabinets is higher than "standard" for a particular technology. Furthermore, how is the locality to know if antenna interference might occur or whether it is necessary to have a larger appurtenance to protect the antenna from weather? Finally, the proposed changes in height or width have a relatively small impact on a tall tower but a much greater impact on a shorter tower. Also, once the tower heights are raised, can a new application to add another 20 feet be submitted so that the tower height grows in stages? The FCC must issue guidance that is clearer, proportional and which can be implemented easily by localities.

C. Key Elements to Consider When approving Covered Changes to Existing Towers and Base Stations

The city has proposed to include substantive application provisions that go beyond just the nuts and bolts of identifying the location, type of structure etc. However, the staff recommendations do not fully consider the following issues for covered changes:

- Whether the structure as modified will be able to accommodate the wind and the other forces due to additional weight and height without increasing the risk of structural failure
- Whether the covered changes will present a hazard to air navigation
- The impact on the environment, especially migratory birds and other wildlife
- Human exposure to radiofrequency radiation
- The difficult but important question of aesthetics and fit into a neighborhood
- Whether covered applications are a substantial changes which would force an older tower to meet enhanced standards for seismic and wind forces

D. Structural Loads and Public Safety

Wireless towers are subject to wind loads, snow loads and the dead load from the weight of everything above the ground. Adding appurtenances that protrude 20 feet or more can introduce forces that need to be accounted for in the design. Also, over the long term, non-galvanized parts of towers may be subject to corrosion and certain types of towers (monopoles) may not be designed for the addition of new transmitting equipment. Engineering designs for the addition or collocation of new transmitting equipment to an existing tower or base station should be sealed by a professional engineer or architect and inspections should be conducted to see if there is any oxidation of steel members, warping or splitting of parts of the tower, or damage to the antennas after a significant climatic event. Also, the city should establish a setback line equal to fall zone in the event that the tower collapses.

E. Hazards to Aircraft

Generally, the alteration of an existing tower more than 60-90 meters in height requires notification to the FAA. Shorter towers near airports also require FAA notification. Towers in the flight path for small planes could be a hazard, especially if the Olympia airport becomes a non-tower controlled field.

F. Environmental Impacts

It is important to recognize that the 2012 Act has exclusions itself; the law does not change anything under the National Environmental Protection Act or the Historic Preservation Act. According to the EPA, the NEPA act includes standards for constructing structures on flood plains or wetlands to achieve flood protection and other purposes. It is EPA policy to avoid impacts, which would include the impact on wildlife, of the occupancy or modification of flood plains or wetlands (see http://www.epa.gov/compliance/resources/policies/nepa/floodplain-management-wetlands-statement-pg.pdf). Maintaining forest habitat is another important value for allowing wildlife to flourish.

According to the US Fish and Wildlife Service (see http://www.fws.gov/habitatconservation/com_tow_guidelines.pdf), communication towers result in the death of at 4-5 million migratory birds annually; these losses include 90 bird species which are threatened or endangered and 124 non-game species of management concern. FWS voluntary guidance covers how the tower impacts areas of wildlife habitat, vegetative species and distances to existing wetlands. Finally, FWS asks if there are any plans for mitigating the impact on migratory birds or whether the proposed facility may affect listed or proposed endangered or threatened species or their habitats as required by 47 CFR 1.1307(a)(3). The city draft mentions the impact on wildlife as it relates to tower lighting but further standards may be needed to fully address the NEPA standards for various locations.

G. Exposure Limits to Radiofrequency radiation

While localities are prohibited by law to reject cell tower applications due to concerns about radiofrequency radiation, this does not mean that radio frequency radiation is unregulated. The FCC requires that towers will not cause human exposure to levels of radiofrequency radiation in excess of the limits set forth in §§1.1310 and 2.1093 of this chapter (see Title 47, Chapter One, Subchapter A, Part I, Subpart Il **§1.1307).** Environment Assessments are required in the following circumstances (ERP and EIRP are acronyms for effective radiated power (ERP), and equivalent isotropically radiated power (EIRP), respectively):

- Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP)
- Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).

Covered changes could require an Environmental assessment (EA) and wireless providers should include the EA or a certification that the covered modifications are exempt. Also, the FCC has chosen to limit radiofrequency exposure evaluations to building mounted antennas (specifically structures which serve as a workplace or residence) so this would not apply to water towers, light poles etc. Covered transactions on workplace or home structures should be evaluated for compliance with this rule.

H. The Difficult Problem of Aesthetics or Fit into the Various Zones in the City

Frequently, the greatest controversy is whether a new WCF should be placed in the proposed location. Adding additional equipment may not cause the same level of public concern.

The 1994 Comprehensive Plan establishes the standard that private utilities, including cell towers should be coordinated and integrated into surrounding land uses. Similarly, camouflaging and antenna concealment is frequently used to make towers less obtrusive and thus fit better into commercial and residential districts. Also,

public input should be solicited before decisions are made on proposals which substantially impact the surrounding community. These computability principles are also part of the proposed 2014 Comprehensive Plan which is under review by the City Council but the need for neighborhood or community input has been eliminated from the proposed Comprehensive Plan.

It is unclear whether the 2012 Act preempts a locality from considering the character and land uses in the surrounding neighborhood when reviewing covered change applications. However, in Section 18.72.120 (F), the city has proposed in a 30 day time limit for reviewing covered change applications. This will allow very little time for public input.

I. Historic Preservation

The other law which was unaffected by the 2012 Act is the National Historic Preservation Act. The Olympia Heritage Commission has recommended that collocations in historic districts should be consistent with the Department of Interior's Standards for the Treatment of Historic Properties – Rehabilitation. Historic Property Rehabilitations must "preserv[e] those portions or features which convey its historical, cultural, or architectural values" (see http://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm). Sections 9 and 10 require preservation of historic materials, features and spatial relationships along with preservation of the basic structure if the WCF or transmission equipment is removed. Applications for collocations on Historic properties or in Historic districts should show compliance with the Department of Interior's regulations and policies.

J. Grandfathering in of Existing Towers

The City of Olympia, like many localities requires upgrading of structures to meet all current regulatory requirements if there is a substantial change in an existing permitted structure. The question of whether these collocations or transmission equipment changes would trigger upgrades needs to be considered. The term "existing tower" should be interpreted to mean an existing approved tower rather than any tower, regardless of approval status.

IV. Proposed Language to Implement the 2012 Act

Given the uncertainties in the federal law and FCC policy guidance, 18.44 should not be changed at this time. The city should develop standards that address all of the issues identified above. Also, unless it is absolutely necessary, the city should avoid adding to the clutter of overlapping terminology by adding terms such as "equipment cabinets", "equipment shelters" "equipment compounds" "ancilliary structures" and "antenna support structures". If the city feels that it must modify Section 18.44, Section 18.44.100 d 1 b should be modified as follows:

> Collocation of new transmitting equipment, or the replacement or repair of existing transmitting equipment on an existing and approved wireless Communication Facility (WCF) or base station shall be approved provided that the collation, replacement or repair does not substantially change the existing WCF or base station. The substantially of the change shall be determined based on the size, placement and characteristics of existing WCF or base station as it is proposed to be modified.

V. Discussions and Negotiations with the Applicant and Other Wireless Carriers

These comments are not intended to impede collocations; the FCC has stated that "collocations on existing sites is often the most efficient and economical solution for carriers needing cell sites". However, the FCC does not have a monopoly on regulation of land use for cell towers; policies need to be developed to ensure that citizens are protected and other laws administered by the EPA and DOI are complied with.

ATT has begun discussions with neighborhoods and city representatives to accommodate rising consumer demand by siting new towers and to meet the mandates in the 2012 Act. These discussions should continue to determine if there are efficient and cost effective solutions to address the issues of safety, neighborhood fit, the environment and historic preservation while at the same time providing citizens with telecommunications services. Recommendations from these discussions could then be incorporated into OMC 18.44.

If these discussions fail to produce results, then the city is forced to issue approvals for covered changes based on Congress's action to circumscribe a locality's police power to regulate land uses. The city can do so without changing the Olympia Municipal Code. Until final regulations are issued by the FCC, the city should state that the approvals are being issued under the 2012 Act and do not signify that the proposed modification complies with city ordinances.

September 14, 2014

Respectfully Submitted:

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PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU OFFERS GUIDANCE ON INTERPRETATION OF SECTION 6409(a) OF THE MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

DA 12-2047

January 25, 2013

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (Tax Act)[1] became law. Section 6409(a) of the Tax Act provides that a state or local government "may not deny, and shall approve" any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station, provided this action does not substantially change the physical dimensions of the tower or base station.[2] The full text of Section 6409(a) is reproduced in the Appendix to this Public Notice.

To date, the Commission has not received any formal petition to interpret or apply the provisions of Section 6409(a). We also are unaware of any judicial precedent interpreting or applying its terms. The Wireless Telecommunications Bureau has, however, received informal inquiries from service providers, facilities owners, and state and local governments seeking guidance as to how Section 6409(a) should be applied. In order to assist interested parties, this Public Notice summarizes the Bureau's understanding of Section 6409(a) in response to several of the most frequently asked questions.[3]

What does it mean to "substantially change the physical dimensions" of a tower or base station?

Section 6409(a) does not define what constitutes a "substantial[] change" in the dimensions of a tower or base station. In a similar context, under the *Nationwide Collocation Agreement* with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, the Commission has applied a four-prong test to determine whether a collocation will effect a "substantial increase in the size of [a] tower."[4] A proposed collocation that does not involve a substantial increase in

[1] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, H.R. 3630, 126 Stat. 156 (enacted Feb. 22, 2012) (Tax Act).

[2] *Id.*, § 6409(a).

[3] Although we offer this interpretive guidance to assist parties in understanding their obligations under Section 6409(c), *see, e.g., Truckers United for Safety v. Federal Highway Administration*, 139 F.3d 934 (D.C.Cir. 1998), the Commission remains free to exercise its discretion to interpret Section 6409(a) either by exercising its rulemaking authority or through adjudication. With two exceptions not relevant here, the Tax Act expressly grants the Commission authority to "implement and enforce" this and other provisions of Title VI of that Act "as if this title is a part of the Communications Act of 1934 (47 U.S.C. 151 et seq.)." Tax Act § 6003.

[4] 47 C.F.R. Part 1, App. B, Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, § I.C (*Nationwide Collocation Agreement*).

size is ordinarily excluded from the Commission's required historic preservation review under Section 106 of the National Historic Preservation Act (NHPA).[5] The Commission later adopted the same definition in the *2009 Declaratory Ruling* to determine whether an application will be treated as a collocation when applying Section 332(c)(7) of the Communications Act of 1934.[6] The Commission has also applied a similar definition to determine whether a modification of an existing registered tower requires public notice for purposes of environmental review.[7]

Under Section I.C of the *Nationwide Collocation Agreement*, a "substantial increase in the size of the tower" occurs if:

1) [t]he mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

4) [t]he mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

Although Congress did not adopt the Commission's terminology of "substantial increase in size" in Section 6409(a), we believe that the policy reasons for excluding from Section 6409(a) collocations that substantially change the physical dimensions of a structure are closely analogous to those that animated the Commission in the *Nationwide Collocation Agreement* and subsequent proceedings. In light of the Commission's prior findings, the Bureau believes it is appropriate to look to the existing definition of "substantial increase in size" to determine whether the collocation, removal, or replacement of equipment

[5] *See* 16 U.S.C. § 470f, *see also* 47 C.F.R. § 1.1307(a)(4) (requiring applicants to determine whether proposed facilities may affect properties that are listed, or are eligible for listing, in the National Register of Historic Places).

[6] *See* Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd. 13994, 14012, para. 46 & n.146 (2009) (*2009 Declaratory Ruling*), *recon. denied,* 25 FCC Rcd. 11157 (2010), *pet. for review denied sub nom. City*
of Arlington, Texas v. FCC, 668 F.3d 229 (5th Cir.), *cert. granted*, 113 S.Ct. 524 (2012); 47 U.S.C. § 332(c)(7).

[7] *See* 47 C.F.R. § 17.4(c)(1)(B); National Environmental Policy Act Compliance for Proposed Tower Registrations,
WT Docket No. 08-61, *Order on Remand*, 26 FCC Rcd. 16700, 16720-21, para. 53 (2011).

on a wireless tower or base station substantially changes the physical dimensions of the underlying structure within the meaning of Section 6409(a).

What is a "wireless tower or base station"?

A "tower" is defined in the *Nationwide Collocation Agreement* as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities."[8] The Commission has described a "base station" as consisting of "radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics."[9] Section 6409(a) applies to the collocation, removal, or replacement of equipment on a wireless tower or base station. In this context, we believe it is reasonable to interpret a "base station" to include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station.[10] Moreover, given the absence of any limiting statutory language, we believe a "base station" encompasses such equipment in any technological configuration, including distributed antenna systems and small cells.

Section 6409(a) by its terms applies to any "wireless" tower or base station. By contrast, the scope of Section 332(c)(7) extends only to facilities used for "personal wireless services" as defined in that section.[11] Given Congress's decision not to use the pre-existing definition from another statutory provision relating to wireless siting, we believe the scope of a "wireless" tower or base station under Section 6409(a) is not intended to be limited to facilities that support "personal wireless services" under Section 332(c)(7).

May a state or local government require an application for an action covered under Section 6409(a)?

Section 6409(a) states that a state or local government "may not deny, and shall approve, any eligible facilities request...." It does not say that a state or local government may not require an application to be filed. The provision that a state or local government must approve and may not deny a request to take a covered action, in the Bureau's view, implies that the relevant government entity may require the filing of an application for administrative approval.

[8] *See Nationwide Collocation Agreement,* § I.B.
[9] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 10-133, *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fifteenth Report,* 26 FCC Rcd. 9664, 9481, para. 308 (2011).
[10] *See also* 47 C.F.R. Part 1, App. C, Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, § II.A.14 (defining "tower" to include "the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein").
[11] 47 U.S.C. § 332(c)(7)(A). "Personal wireless services" is in turn defined to mean "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services." *Id.* § 332(c)(7)(C)(1).

Is there a time limit within which an application must be approved?

Section 6409(a) does not specify any period of time for approving an application. However, the statute clearly contemplates an administrative process that invariably ends in approval of a covered application.

We believe the time period for processing these applications should be commensurate with the nature of the review. In the *2009 Declaratory Ruling*, the Commission found that 90 days is a presumptively reasonable period of time to process collocation applications.[12] In light of the requirement of Section 6409(a) that the reviewing authority "may not deny, and shall approve" a covered request, we believe that 90 days should be the maximum presumptively reasonable period of time for reviewing such applications, whether for "personal wireless services" or other wireless facilities.

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[12] *See 2009 Declaratory Ruling*, 24 FCC Rcd. at 14012-13, paras. 46-47.

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APPENDIX

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

(a) FACILITY MODIFICATIONS.

(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.