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**COMMUNITY PLANNING &  
ECONOMIC DEVELOPMENT DEPARTMENT**

*Creating Solutions for Our Future*

Joshua Cummings, Director

**MEMORANDUM**

**TO:** Thurston County Planning Commission

**FROM:** Kaitlynn Nelson, Associate Planner

**DATE:** February 11, 2022

**SUBJECT:** Wireless Communication Facilities, Development Code Docket #A19  
Thurston County Zoning Code Chapters 20.33, 20.03, and 20.54  
Results of Wireless Stakeholder Committee

**Intro**

This memo is intended to provide information to the Planning Commission on the Stakeholder Committee process. Once the Planning Commission has reviewed these items and provided input, staff can then provide more specific information at a following work session. It includes background, the process to date, and items to consider from the Stakeholder Meetings.

**Background**

The Wireless Communication code establishes the permitting process for numerous types of wireless facilities in both the public rights-of-way and private property, the criteria for approval, and the design guidelines for each type of facility. An update to the wireless code is required for compliance with the Federal Telecommunications Act and the Federal Communications Commission (FCC), which has adopted multiple orders over the years that impose new and restrictive conditions on local control. Updating the code allows the County to preserve the ability to assert the remaining authority in the review of wireless facilities. The timeline for adoption of the draft code is based not on a calendar deadline, but on the need to fill the gap where the County does not have code in place to request any requirements beyond the determinations made by the FCC.

Staff have worked closely with consultant Ken Fellman, with Kissinger & Fellman Law Firm, who was hired by the County Prosecuting Attorney's office, and who has experience in updating wireless code, as well as actively participating in the ongoing legal updates by the FCC. The draft code is a complete rewrite, with elements of the existing County wireless code considered where applicable, as well as examples of other local codes from cities like Tumwater and Anacortes. This item has been officially docketed since 2014 at the direction of the BoCC.

### **Process to Date**

An update to the County's Wireless Communication Facilities code provisions are underway. This item is #A19 on the Development Code Docket. Several work sessions were held with the Planning Commission on the code update pertaining to Wireless Communication Facilities, prior to an open public hearing held on June 2<sup>nd</sup>, 2021. Public comments led Planning Commission to make a request to the Board of County Commissioners (BoCC) to establish a Stakeholder Committee in order to receive further input from interested individuals.

The BoCC provided direction for staff to supply a list of potential participants for the committee to the Planning Commission. The BoCC outlined the next steps, stating that Planning Commissions will review potential participants, determine who to invite, and then staff would work with the committee to determine suggested changes, with a limitation of 3 meetings, with results then brought back to Planning Commission for consideration.

The participants included community members Josh Stottlemyer, Christy White, Dorothy Lyons, and Sam Milham; wireless representatives (and State residents) Kim Allen (Verizon Wireless) and Meridee Pabst (AT&T); and Planning Commissioners Jim Simmons and Kevin Pestinger. Thurston County legal consultants Ken Fellman and Colleen McCroskey were also in attendance to aid staff in answering technical questions.

The Stakeholder Committee met on October 19<sup>th</sup>, November 10<sup>th</sup>, and December 8<sup>th</sup> of 2021.

### **Items to consider from the Stakeholder Committee Meetings**

Participants of the committee did agree on a few general concepts, like creating prioritized locations and expanding allowed zones, but did not come to a consensus on the extent of those changes. Items are included in this list regardless of agreement. Items were not included in this list if they went beyond what the County has the legal authority to change, as determined by the legal consultants. There were further discussions and details on recommended items than are presented in this memo. If Planning Commission opts to pursue an item further, those details can be provided at a later work session.

### **Items Consistent with Thurston Zoning Code**

#### **1. Prioritize locations and zones for Wireless Communication Facilities (WCFs) and Small Cell Wireless Facilities (SWFs).**

**Staff Analysis:** This could identify locations that are considered a priority for WCFs, like Commercial or Industrial zones. Applicants could be required to show that no sites are available in a priority area before applying for a less ideal site.

#### **2. Expand zones where WCFs would be allowed.**

**Staff Analysis:** WCFs are not currently allowed in HC (Highway Commercial), LTF (Long-Term Forestry), and PP (Public Parks) zoning districts. Wireless representatives would specifically like to see this reconsidered with the intent being that the more the County can encourage siting in these zones, the less demand there will be to locate them

in or closer to residential zones.

**3. Require significant setback parameters for all wireless facilities (including SWFs), particularly near dwellings.**

Current setbacks are as follows:

- WCFs, except those in rights-of-way, shall be setback from property lines a minimum of 100% of the structure's height, including antennas.
- WCFs in the rights-of-way exceeding 80 feet in height shall be separated from structures occupied (at least 3 days a week) and potential building sites for such structures (measured to the lot's minimum setback line) a minimum of 100% of the proposed WCFs height, including antennas. WCFs less than 80 feet in height are not subject to these setbacks.
- Setback reduction allowed with better design that includes screening, including extending into adjacent property, with property owner's permission.
- Associated equipment must meet all building setbacks of that zone.

Draft code language setbacks are as follows:

- In residential zones, WCFs must not be closer to the adjoining lot line than the greater of the minimum building setback or 100 percent of the tower height.
- In nonresidential zones, WCFs must comply with the setback requirements set forth in the applicable zoning code (20 ft, 10 ft, and 5 ft from lot lines).
- If land in a nonresidential zone abuts a residential zone with an incompatible use, facilities must not be closer than the greater of the minimum building setback or 100 percent of the tower height from the adjoining lot line.
- Reduction in setbacks allowed with visual or noise abatement techniques.
- Lattice towers and guy towers shall be setback from all adjacent residentially zoned properties a distance no less than two feet for every foot of tower height or no less than one foot for every one foot of tower height if the tower is of a camouflaged design.
- Lattice towers and guy towers shall be set back from all rights-of-way and adjacent properties a distance no less than one foot for every foot of tower height.
- Setbacks do not apply to SWFs in the rights-of-way, and WCFs are not allowed in the rights-of-way.

**Staff Analysis:** Significant setbacks could effectively prohibit the ability to provide wireless service, which is outside of the County's ability to regulate, and expose the County to litigation for claims that the regulations violate provisions of federal law. Federal law says that local regulations that "materially inhibit" a company from providing service that has the "effect of prohibiting" that service is in violation of the statute. More research would be needed to determine what distances may effectively prohibit provision of wireless service. A variance process could be provided to reduce a higher setback if it is determined to effectively prohibit wireless service, which would need to identify more staff time for review.

**4. Require independent Radio Frequency (RF) testing verifying that cumulative levels, per the FCC, are within the FCC limits.**

**Staff Analysis:** This could include an initial test as a condition of the permit and conducting annual tests, unannounced. This could be done by County staff (with additional training or positions and equipment) or an independent 3<sup>rd</sup> party contractor. Testing in this manner and at the County's cost is within the legal authority of the County but will require an analysis of staff and funds. Whether the County can charge a fee from the applicant would still need to be determined.

The current draft code has language that states the County may submit the applicant's materials to a third-party RF professional for review, as may be reasonably deemed necessary by the County to determine compliance with federal regulations.

**5. Require the largest possible spacing between all facilities.**

**Staff Analysis:** This will likely involve a different requirement for different zoning districts. For example, if we want to encourage towers in industrial zones, we likely do not want to have large separation/spacing requirements. Because we likely want to discourage towers in and adjacent to residential zones, we would suggest greater spacing requirements to avoid a "tower farm" look in these areas. For SWFs in the rights of way, because we want to encourage concealed facilities built into existing vertical infrastructure like street light and traffic signal poles, we likely do not want to require large spacing requirements between these mixed-use poles. Since we want to discourage new stand-alone SWF poles in the rights of way, we should create spacing requirements to avoid pole clutter, but not so great as to violate federal law by materially inhibiting the ability to provide service.

The draft code states spacing is a minimum of 600 feet, except for SWFs. We are advised by our consultant that spacing requirements greater than 600 feet may make it more likely that the County could face a legal challenge.

**6. Prohibit new macro facilities in the ROW.**

**Staff Analysis:** While the County currently has two existing monopoles within the rights-of-way, the draft code language prohibits new macro facilities in the ROW. Wireless representatives would specifically like to see this reconsidered to allow macro facilities in the ROW.

**7. Prohibit "wireless transmission over power lines".**

**Staff Analysis:** This issue requires a policy discussion. Wireless companies can create network capacity in part by attaching certain equipment to power lines. If permitted, this equipment would be required to meet all safety code requirements. Similar to using

existing street lights and traffic signal poles for SWFs, using power lines could help to minimize the demand for new stand-alone poles in the rights of way. If the County prohibits wireless facilities on power lines, it could increase the demand for these other SWFs in the rights of way. There have also been bills introduced in the legislature the past two sessions that could restrict some local authority over placement of wireless facilities.

**8. Change definition for “Wireless Service”.**

**Staff Analysis:** The current code defines wireless communications facilities but does not define wireless service. A definition can be added for wireless service that is consistent with how the term is used in federal law.

**9. Clarify “detailed explanations” in section 20.33.060 B.1 TCC.**

**Staff Analysis:** This section of the code requires applicants to provide a “detailed explanation” of how their application meets the criteria of the appropriate sections of the federal regulations that provide for mandatory approval of qualifying applications. Language could be provided that clarifies that the explanation must be in writing and it must address the applicable criteria of federal law related to height, width, excavation, expansion of the site, and number of ground cabinets. This would also assist staff when receiving applications and direct them to the applicable sections of the federal regulations that need to be reviewed in order for the application to qualify for mandatory approval.

**10. Remove allowance for facilities to be located in playfields, ball fields, or stadium lights.**

**Staff Analysis:** As an alternative to prohibiting, locations like ball fields could provide an opportunity to site WCFs with imposed conditions, requiring that these sites be camouflaged or concealed. Siting on public property could also be a defining factor, as well as providing more options for “preferred” sites, potentially reducing the demand for other sites that would arguably be more objectionable to the public.

## Items inconsistent with similar Zoning code

**11. Require notice to citizens at time of application and at approval for all wireless facilities. Allow community members to comment on a siting’s adverse impact.**

**Staff Analysis:** The majority of WCFs and SWFs are administrative permits. Administrative permits involve an application that is subject to clear, objective, and nondiscretionary standards or standards that require the exercise of professional judgement about technical issues. This does not allow for public comment to be considered in a decision. New towers are considered a Type 3 review, which requires Hearing Examiner approval. A Type 3 decision allows for public participation through a public hearing and comment period. However, the FCC has imposed regulatory “shot

clocks” for these types of permits, which limit the time in which the County must act after an application is filed and requires a quicker decision than the Hearing Examiner process allows for. For newer tower sites, federal law requires a final decision in 150 days. For collocations on existing WCFs, most decisions must be made within 90 days. And for some modifications that meet the criteria for “Eligible Facilities Requests” as well as collocations of SWFs on existing structures, decisions must be made within 60 days.

Staff could research and present information to PC regarding changing permits from Type 1, Administrative to Type 3, Hearing Examiner review and/or staff could research and present on keeping permits as Administrative, but include a notice process, without public comment.

**12. Require adequate and appropriate third-party liability insurance for installers, their contractors, and the end facility users.**

**Staff Analysis:** The types of insurance that some members of the stakeholder committee propose are not generally required by the zoning code for any other type of development. If the County wants to require this type of insurance as a condition of obtaining building permits, it would usually be considered by Public Works staff.

**13. Require substantial written evidence of compliance with all State, Federal, and FCC requirements, licenses, and permits.**

**Staff Analysis:** Thurston County code usually conditions permits to follow all other state and federal codes, but does not withhold approval until compliance with other codes is verified. This request identified requiring significant proof/verification that all other code requirements, like electrical, ADA, structural, safety, traffic, and FCC limits, are met. These go beyond the usual requirements in Thurston County Zoning code.

**14. Include language which supports automatic compliance with stricter environmental, health, and radiation rules implemented by state or federal government.**

**Staff Analysis:** The draft code requires compliance with all “applicable” federal, state, and local laws. Compliance with applicable RF regulations is covered in Section 20.33.150 TCC. The existing language was determined by legal staff to meet the intention of this request, but it is still being requested by community participants.

**15. Require more standards for SWFs in the rights-of-way.**

**Staff Analysis:** SWFs in the rights-of-way have minimal design standards in the draft code because standards are usually located in franchise agreements or rights-of-way licenses. There could also be a reference in the Zoning code to follow administratively approved design guidelines adopted by Public Works. Administratively approved design guidelines will allow the County more flexibility and a quicker ability to modify those design guidelines in response to changes in legal requirements and to accommodate new

designs that are being developed by the wireless industry. This would be an internal process that is approved by the Public Works Director. Public Works staff could provide a public process for this review to receive input, if directed.

Design standards can be placed within Title 20 TCC, Zoning to require the full public process to any updates. However, standards for other vertical facilities located in the rights-of-way, like utility poles, street lights, and traffic signal poles, are not located in the Zoning chapter.

**16. Modify 20.33.020 TCC, “Purpose” to “Legislative Intent” and include more descriptive words that extend intent to avoid any unnecessary adverse impacts.**

**Staff Analysis:** Legal staff state there is no legal difference or impact on the County to how we title this opening section of the wireless code. The existing draft language accurately describes the intent and purpose of the code. Changes are possible, though the proposed language is inconsistent with other sections of county code. Staff would point out that the purpose of this section is to provide a broad overview of the purpose and intent, and not specific regulatory requirements, as requested by members of the committee. Regulatory requirements are addressed later in the code.

Other procedural items:

**17. Create a County website with educational information on Radiofrequency Emissions, information on submitting requests/violations to the FCC, and a public map with locations of all active wireless permits and completed facilities.**

**Staff Analysis:** As an action related to this code update, a recommendation could be provided to the Board of County Commissioners to direct staff time to create a County webpage that addresses permitting requirements, links to information about applying for site approvals, a map showing the public those locations where approved facilities exist, and sites where there are pending applications. This section of the website could also provide links to the FCC information on RF regulations and how to file complaints. The County cannot provide educational information on RF emissions from non-governmental sources.

**18. Create a clear list of easily referenceable instructions and checklists for staff to review permits.**

**Staff Analysis:** This is a regular internal practice with code updates at the County. No action needed.