

**WHATCOM COUNTY
PLANNING COMMISSION**

**Personal Wireless Service Facilities
Code Amendments**

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject proposal consists of amendments to the following Whatcom County Code chapters:
 - a. Wireless Communication Facilities (WCC 20.13);
 - b. Public Utilities (WCC 20.82);
 - c. Nonconforming Uses and Parcels (WCC 20.83);
 - d. Definitions (WCC 20.97); and
 - e. Project Permit Procedures (WCC 22.05).
2. A Determination of Non-Significance was issued by the SEPA Responsible Official on April 6, 2022.
3. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 13, 2022.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 10, 2022.
5. Notice of the Planning Commission hearing was sent to the County's e-mail list on June 13, 2022.
6. The Planning Commission held a public hearing on the subject amendments on June 23, 2022. The Planning Commission held work sessions on the subject amendments on July 28 and September 8, 2022.
7. In order to approve development regulation amendments, the County must find that the amendments are consistent with the comprehensive plan (WCC 22.10.060(2)).
8. Federal laws and regulations partially preempt local government authority over personal wireless service facilities, such as cell phone facilities.

Federal Rules – General Telecommunication Provisions

9. Federal law passed by the U.S. Congress indicates that “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service” (47 U.S. Code 253(a)).

Federal Rules – Personal Wireless Service Facilities

10. Federal law passed by the U.S. Congress (47 U.S. Code 332(c)(7)(B)) states that:

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

11. However, Federal law (47 U.S. Code 332(c)(7)(A)) also states:

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

Federal Rules - Eligible Facilities Requests

12. Federal law passed by the U.S. Congress (47 U.S. Code 1455 (a)(1)) states that:

. . . 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.

13. Federal law (U.S. Code 1455(a)(2)) 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.

14. The Code of Federal Regulations (CFR) Title 47, Chapter 1, Subchapter A, Part 1, Subpart U titled “State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Facilities” (Rules adopted by FCC) addresses “eligible facilities requests” in Section 1.6100. This section provides definitions and rules for review of applications. CFR 1.6100(c)(2) states that “Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application. . .” for an eligible facilities request.

15. Federal law preempts certain County regulatory authority over wireless eligible facilities requests. The County Code currently does not reflect requirements of federal law. Therefore, County Code is being updated to incorporate the provisions of federal law.

Federal Rules – Small Wireless Facilities

16. The Code of Federal Regulations (CFR) Title 47, Chapter 1, Subchapter A, Part 1, Subpart U titled “State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Facilities” addresses small wireless facilities in Sections 1.6002 and 1.6003. Definitions are set forth in 47 CFR 1.6002. “Presumptively reasonable periods of time” for local government action on applications are contained in 47 CFR 1.6003(c)(1), as follows:
- . . . Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.
 - . . . Review of an application to deploy a Small Wireless Facility using a new structure: 90 days. . .
17. Federal law preempts certain County regulatory authority over small wireless facilities. The County Code currently does not reflect requirements of federal law. Therefore, County Code is being updated to incorporate the provisions of federal law.

Federal Rules – Macro Wireless Facilities

18. The Code of Federal Regulations Title 47, Chapter 1, Subchapter A, Part 1, Subpart U titled “State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Facilities” addresses facilities that do not qualify as eligible facilities requests or small wireless facilities (that the County is calling “macro wireless facilities”) in sections 1.6002 and 1.6003. Definitions are set forth in 47 CFR 1.6002. “Presumptively reasonable periods of time” for local government action on applications are contained in 47 CFR 1.6003(c)(1), as follows:
- . . . Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days. . .
 - Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days. . .
19. Federal law preempts certain County regulatory authority over macro wireless facilities. The County Code currently does not reflect requirements of federal law. Therefore, County Code is being updated to incorporate the provisions of federal law.

Whatcom County Comprehensive Plan

20. Whatcom County Comprehensive Plan Chapter 2 - Land Use states that the County has designated telecommunication towers as essential public facilities (p. 2-95).
21. Whatcom County Comprehensive Plan Land Use Policy 2WW-9 states:
 - . . . Personal wireless communication facilities, such as cell phone towers, shall be sited in accordance with Whatcom County Code 20.13
 - . . . Proximity to airports and potential hazards to aviation will be considered when siting new towers or increasing height of existing towers.
22. The Whatcom County Comprehensive Plan Chapter 5 - Utilities states:
 - Utilities, as defined herein and for purposes of the plan, include all lines and facilities used to distribute, collect, transmit, or control electric power, natural gas, petroleum products, information (telecommunications), water, and sewage. . . It is the intent of this plan to support providers of electricity, natural gas, petroleum, telecommunications, and other utilities in fulfilling their public service obligations required by state law to provide service on demand to existing and future customers. It is also the intent of this plan to minimize any negative effects resulting from the provision of that service on the residents, infrastructure, and the environment of the county. . . (p. 5-1).
23. The Whatcom County Comprehensive Plan Utility Chapter states "Telecommunications are provided by multiple telephone, cable television, internet, and wireless communication companies. . ." (p. 5-3).
24. Whatcom County Comprehensive Plan policies relating to utilities include:
 - Policy 5B-3: Recognize the economic opportunities and benefits communication services access provides to the community.
 - Policy 5B-4: Support development regulations that are flexible and receptive to innovations and advances in communication technologies and that recognize the positive impact of moving information rather than people.
 - Policy 5C-1: Support user access to natural gas, electric, and communications utilities.
 - Goal 5D: Minimize the time required for processing utilities permits.

25. Whatcom County Comprehensive Plan Chapter 7 - Economics states:

Along with planning for future water and other infrastructure for economic development, electric energy supply and telecommunications are also important for future economic growth within the county (p. 7-11).
26. The Federal Communication Commission's (FCC) *Declaratory Ruling* (November 18, 2009) states ". . . Wireless services are central to the economic, civic, and social lives of over 270 million Americans . . ." (p. 2).
27. The FCC's *Declaratory Ruling and Third Report and Order* (September 26, 2018) states:

. . . America is in the midst of a transition to the next generation of wireless services, known as 5G. These new services can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. . . (p. 2).
28. The FCC's *Declaratory Ruling and Notice of Proposed Rulemaking* (June 9, 2020) states:

. . . We are committed to working with State and local governments to facilitate the deployment of advanced wireless networks in all communities consistent with the decisions already made by Congress, which we expect will usher in a new era of American entrepreneurship, productivity, economic opportunity, and innovation for years to come . . . (p. 3).
29. The subject amendments are primarily intended to bring consistency between federal laws adopted by the U.S. Congress & implementing regulations adopted by the FCC and County codes relating to personal wireless service facilities.
30. The federal laws and regulations are intended, among other things, to facilitate user access and economic opportunities. By virtue of being consistent with federal rules, the County Code amendments should also support user access and facilitate economic opportunities and benefits.
31. Federal regulations set "presumptively reasonable periods of time" for local government permitting of various types of wireless facilities. These federal timelines range from 60 days to 150 days depending on the type and size of wireless facility. The subject County Code amendments are consistent with these federal timelines thereby minimizing the required time for processing permits.

CONCLUSION

The subject Whatcom County Code amendments are consistent with the Whatcom County Comprehensive Plan.

RECOMMENDATION

Based upon the above findings and conclusions, Whatcom County Planning Commission recommends approval of the following amendments to the Whatcom County Code:

Exhibit A, Personal Wireless Service Facilities (WCC 20.13)

Exhibit B, Public Utilities (WCC 20.82)

Exhibit C, Nonconforming Uses and Parcels (WCC 20.83)

Exhibit D, Definitions (WCC 20.97)

Exhibit E, Project Permit Procedures (WCC 22.05)

WHATCOM COUNTY PLANNING COMMISSION



Kelvin Barton, Chair



Tammy Axlund, Secretary

September 8, 2022
Date

9/8/22
Date

Commissioners voted to recommend approval on September 8, 2022 (vote was 7-0 with 2 members absent). Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Kimberley Lund, Dominic Mocerri, and Scott Van Dalen.