

**Chapter 17.24**  
**WIRELESS COMMUNICATION FACILITIES**

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**17.24.010 Purpose.**

The purpose of this chapter is to establish controls and procedures for all wireless communication facilities as guided by state and federal regulations.

**17.24.020 Applicability.**

- A. The provisions of this section shall apply to all new wireless communication facilities as well as the expansion and/or modification of any existing facilities within the city, subject to the following exemptions:
1. Satellite earth stations using antennas not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services using any size antenna in any district;
  2. Send-and-receive citizen band radio antennas operated by federally licensed amateur (ham) radio operators;
  3. Industrial, scientific and medical equipment as regulated by the FCC in [47 CFR Part 18](#); and
  4. Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC by [47 CFR Parts 97](#) and [95](#), respectively.
- B. Unless specifically exempted, all wireless communications facilities must conform to the provisions governing Category 1 and Category 2 facilities as determined by the city.

- C. Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the city's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.
- D. Interpretation. Interpretations of this section shall be guided by Section 6409 of the Spectrum Act, the Wireless FCC Eligible Facilities Request Rules, the FCC's Report and Order in In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, 13-32, WC Docket No. 11-59, FCC 14-153.

**17.24.030 Category 1 Wireless Communication Facilities.**

- A. New Category 1 wireless communication facilities are subject to the following standards:
  - 1. The facilities shall be located on buildings or other structures.
  - 2. The facilities may exceed the height restrictions of the underlying zone but shall be no more than ten feet taller than the existing structure on which the facility is located.
  - 3. The shelter or cabinet used to house related electronics equipment must be concealed from view and/or camouflaged. This can be accomplished through landscaping or other screening, the use of compatible building materials, or painting or finishing in a manner that blends with the dominant color of the background except where otherwise required by the FAA or FCC.
  - 4. A building permit shall be required to construct a Category 1 wireless communication facility.
  - 5. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof.

**17.24.040 Category 2 Wireless Communication Facilities.**

- A. The following minimum development standards apply to all Category 2 wireless communication facilities, including towers. These standards are in addition to any development standards that apply in the underlying zoning district in which a Category 2 wireless communication facility is located and any conditions of approval.
  - 1. A building permit shall be required to construct or modify a Category 2 wireless communication facility.
  - 2. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof and may exceed the height restrictions of the underlying zone but shall be no more than ten feet taller than the existing structure on which the facility is located.

3. The maximum height of a monopole or lattice tower is sixty feet for one carrier or one hundred twenty feet if two or more carriers are located on the monopole or lattice tower.
4. Anti-Climbing Devices. All wireless towers and required fencing shall be equipped with appropriate anti-climbing devices.
5. Attachment to Trees Prohibited. It is prohibited to attach any wireless communications facility or portion thereof to any tree.
6. Signs. All wireless communications towers shall be identified with a nonilluminated sign not exceeding four square feet. The sign shall list the wireless service provider's name and emergency telephone number and shall be posted in a place visible to the general public.
7. Lighting. Wireless communications facilities shall not be illuminated except where required by the FAA, or the Washington Department of Transportation, Aeronautics Division.
8. Painting. Wireless communications facilities shall be painted or finished in a manner that blends with the dominant background, except where otherwise required by the FAA or Washington Department of Transportation, Aviation Division. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.
9. Setbacks. The following setback standards shall apply to wireless communications facilities:
  - a. Accessory equipment structures and wireless communications support structures which are attached to existing buildings or other permanent structures shall comply with the setback requirements for the underlying district.
  - b. Freestanding wireless towers located in any district shall be set back from any property line of an abutting residential use or district by a distance equal to the height of the wireless communications support structure, or one hundred feet, whichever is greater.
  - c. Setbacks for freestanding wireless towers shall be measured from the ground-level base of the structure.
  - d. The setback in any zone may be reduced through a variance, if the applicant can demonstrate that:

- i. Reduction in the setback increases the screening opportunities between the facility and abutting residential and other uses, for example, by placement behind tall trees, in tree groves, behind buildings or near other tall elements;
- ii. The reduction in setback allowed is the minimum required to achieve increased visual screening of the facility from abutting residential uses.

10. Landscaping Standards. Category 2 wireless communications facilities shall be subject to the following landscaping and screening standards:

- a. The perimeter of the wireless tower and any guy wires and anchors shall be enclosed by a fence or wall per requirements contained in [ChapterSection 17.2822-100](#), Landscaping.
- b. Within the required setback, the applicant shall provide landscaping to include: at least one row of evergreen shrubs spaced not more than five feet apart and capable of growing to form a continuous hedge at least five feet high within five years of planting, and evergreen trees or shrubs, spaced not more than fifteen feet apart or less than four feet high when planted.
- c. Maintenance of the landscaped area shall be the responsibility of the applicant and/or operator of the facility. Required landscaping must be maintained in a healthy condition. Trees and shrubs that die must be replaced with healthy materials of the same or similar species and same size to the extent practicable.
- d. The city may allow the use of landscaping and screening other than that described above if the applicant shows the proposed landscaping and screening will achieve at least the same degree of screening provided pursuant to those subsections when viewed from off-site public areas and residences.

11. Height Standards. The following standards shall apply to wireless communications facilities:

- a. The height of a wireless communications facility shall include the tower and any attached antennae proposed at the time of application.

12. Screening. For new wireless towers and accessory equipment to be located in any district other than industrial districts, visual impacts must be mitigated to the greatest extent practicable by using stealth design, camouflage or screening, including but not limited to: fencing, landscaping, strategic placement adjacent to existing buildings or existing vegetation, placement of accessory equipment structures underground, and/or incorporation of wireless facilities into the architectural features of existing buildings or structures. Mitigation may also include design compatibility with

key elements in the surrounding area, such as: use of brick or other material similar to that used in adjacent buildings or structures; visual blending of support structures with compatible architectural features such as flag poles, bell towers or cornices; or use of existing vegetation to camouflage support structures.

13. Co-location.

- a. Freestanding wireless towers shall be designed for co-location of wireless facilities.
- b. No freestanding wireless towers may be constructed within one mile of an existing freestanding wireless tower unless it is demonstrated to the satisfaction of the city that no existing tower can accommodate the additional wireless communication facility or that the location does not satisfy the operational requirements of the applicant.
- c. The applicant shall provide evidence that applicant has provided notice to all other area wireless service providers to encourage co-location of additional antennas on the proposed structure.

**17.24.050 Eligible Wireless Communication Facilities Modifications.**

- A. The provisions of this subsection D apply to the following modifications; any modification that does not meet the standards of this section shall be processed as a new facility:
  - A. The co-location of new transmission equipment;
  - B. The removal of transmission equipment; and
  - C. The replacement of transmission equipment that meets the criteria for not being a significant change.
- B. Applicability—Relationship to Other Rules and Regulations.
  1. Sole and Exclusive Procedure. Except as may be otherwise provided in this section, and notwithstanding any other provisions in the Kelso Municipal Code, the provisions of this section shall be the sole and exclusive procedure for review and approval of a proposed facilities modification which the applicant asserts is subject to review under Section 6409 of the Spectrum Act. To the extent that other provisions of the Kelso Municipal Code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this section shall control. In the event that any part of an application for project permit approval includes a proposed facilities modification, the proposed facilities modification

portion of the application shall be reviewed under the provisions of this section. In the event that an application for project permit approval includes a proposal to modify a wireless eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be subject to review under this subsection D and shall be subject to review under other applicable provisions of this section.

2. Nonconforming Structures. This section shall not apply to a proposed facility modification to a wireless eligible support structure that is not a legal conforming, or legal nonconforming, structure at the time a completed wireless eligible facilities modification application is filed with the city. To the extent that the nonconforming structures and use provisions of the Kelso Municipal Code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this section, such provisions are superseded by the provisions of this section and shall not apply.
3. Replacement of a Wireless Eligible Support Structure. This section shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of the wireless tower or wireless base station.
4. First Deployment—Base Station. This section shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support wireless transmission equipment lawfully installed within or upon, or attached to, the structure.

#### **17.24.060 Permitting.**

- A. Tolling Time Frame for Review. The application review period begins to run when the application is received, and may be tolled when the approval authority determines that the application is incomplete and provides notice as set forth below. The application review period may also be tolled by mutual agreement of the approval authority and applicant. The time frame for review is not tolled by a moratorium on the review of wireless eligible facility modification applications.
- B. To toll the time frame for review for incompleteness, the approval authority must provide written notice to the applicant within thirty days of the date of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to submittals set forth in this section and any supplemental information requested by the city that is reasonably related to determining whether the proposed facilities modification will substantially change the physical dimension of an eligible support structure.

1. The time frame for review begins running again when the city is in receipt of applicant's supplemental submission in response to the approval authority's notice of incompleteness.
2. Following a supplemental submission, the city shall have ten days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Except as may be otherwise agreed to by the applicant and the approval authority, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
3. A notice of incompleteness from the city will be deemed received by the applicant upon the earlier of personal service upon the authorized person, delivery by electronic mail to the authorized person (if such delivery is authorized for receipt of notice by the authorized person), or three days from deposit of the notice in the United States mail, postage prepaid, and in an envelope properly addressed to the authorized person using the address set forth in the application.

D. Modification of Application. In the event that after submittal of the application, or as a result of any subsequent submittals, applicant modifies the proposed facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided, that applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the city to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

E. Review of Application.

1. The city shall review a wireless eligible facilities modification application to determine if the proposed facilities modification is subject to this section, and if so, if the proposed facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.
2. Within sixty days of the date on which the city receives a wireless eligible facilities modification application, less any time period that may be excluded under the tolling provisions of this section or a tolling agreement between the applicant and the approval authority, the city shall approve the application and contemporaneously issue an eligible facilities modification permit, unless the approval authority determines that the application is not subject to this section, or the proposed facilities modification will substantially change the physical dimension of an eligible support structure.

3. A wireless eligible facilities application shall be approved, and a wireless eligible facilities permit issued, upon determination by the approval authority that the proposed facilities modification is subject to this section and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities application shall be denied upon determination by the approval authority that the proposed facilities modification is not subject to this section or will substantially change the physical dimensions of an eligible support structure. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the substantial change criteria.
4. An application that has been deemed approved shall be and constitute the equivalent of a wireless eligible facilities modification permit, except as may be otherwise determined by a court of competent jurisdiction, and shall be subject to generally applicable enforcement and compliance requirements in the same manner as an eligible facilities modification permit issued pursuant to this section.
  - a. "Deemed approved" for the purposes of administering the regulation of wireless communications facilities shall mean and refer to a wireless eligible facilities modification application that has been deemed approved upon the city's failure to act, and has become effective, as provided pursuant the Wireless FCC Eligible Facilities Request Rules.
5. A denial of a wireless eligible facilities modification application shall set forth in writing the reasons for the denial and shall be provided to the applicant.
6. Notwithstanding any other provisions in the Kelso Municipal Code, no administrative review is provided for review of a decision to condition, deny or approve an application. Applicant and the city retain any and all remedies that are available at law or in equity, including by way of example and not limitation those remedies set forth in the Wireless FCC Eligible Facilities Request Rules and remedies available under the Land Use Petition Act. In the event no other time period is provided at law for bringing an action for a remedy, any action challenging a denial of an application or notice of a deemed approved remedy shall be brought within thirty days following the date of denial or following the date of notification of the deemed approved remedy.

#### **17.24.070 Substantial Change Criteria**

- A. A proposed facilities modification will substantially change the physical dimensions of a wireless eligible support structure if it meets any of the following criteria:
  1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support



structures, it increases the height of the structure by more than ten percent or more than ten feet, whichever is greater.

- a. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the wireless tower or wireless base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- b. For towers other than towers in the public rights-of-way, it involves 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; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- b. For any wireless eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and wireless base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
  - i. It entails any excavation or deployment outside the current wireless site;
  - ii. It would defeat the concealment elements of the wireless eligible support structure; or
  - iii. It does not comply with conditions associated with the siting approval of the construction or modification of the wireless eligible support structure or wireless base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

**17.24.080 Nonconforming Structure—Termination.**

- A. The provisions of this subsection shall apply to any facilities modification constructed, installed, placed or erected pursuant to a wireless eligible facilities modification permit, or pursuant to a deemed approved remedy, which facilities modification did not conform to zoning and/or development

regulations, exclusive of this section, in effect at the time the completed eligible facilities modification application was filed.

B. Nonconforming Structure Determination. A facilities modification to which this section applies is subject to termination as a nonconforming structure upon the following conditions:

1. Final, Nonappealable Decision. An appellate court, in a final and nonappealable decision, determines that Section 6409(a)(1) of the Spectrum Act is unconstitutional or otherwise determined to be invalid or unenforceable; and
2. Notice of Nonconforming Structure Determination. The city provides written notice to the applicant that the city has determined that the facilities modification did not conform to zoning and/or development regulations, exclusive of this section, in effect at the time the completed wireless eligible facilities modification application was filed and that the facilities modification constitutes a nonconforming structure pursuant to the provisions hereof and must be made conforming or the facilities modification terminated.
3. Conformance—Termination. Upon receipt of notice of the city's nonconforming structure determination, applicant shall abate the nonconformance by either conforming the wireless site to the zoning and development regulations in effect at the time the completed wireless eligible facilities modification application was filed, or removing the facilities modification and returning the wireless site to the condition that existed prior to the construction, installation, placement or erection of the facilities modification. The time period for conformance shall be one year from the date of the city's notice of the nonconforming structure determination.
4. The provisions of Chapter 17.~~0840~~ Permit Processing.

**17.24.090 Removal of Wireless Communications Facilities.**

Any antenna or tower that is not operated for wireless communications for a continuous period of twelve months shall be removed by the owner of the property on which the tower or antenna is situated, or by the owner or lessee of the tower or antenna, within ninety days of receipt of notice to remove from the city. If the antenna and/or tower is not removed within said ninety days, the city may remove the antenna or tower at the owner's expense. If there are two or more wireless communications providers collocated on a single tower, this provision shall not become effective until all providers cease using the wireless communication facility for a continuous period of twelve months. (Ord. 3889 § 3 (Exh. A), 2017)