



CITY OF SEATAC

PLANNING COMMISSION MEETING

Riverton Room, SeaTac City Hall, 4800 S. 188th Street
December 1, 2015, 5:30 p.m.

MEETING AGENDA

- 1) Call to Order/Roll Call – 5:30 p.m.
- 2) Approve Minutes of November 17, 2015 Planning Commission meeting (Exhibit A)
- 3) Public Comment: Public comment will be accepted on items not scheduled for a public hearing
- 4) Briefing on Angle Lake Station Area regulations
- 5) Briefing on Comprehensive Plan Consistency project (Exhibit B)
- 6) Briefing on Wireless Communication Facilities regulations (Exhibit C)
- 7) CED Director's Report
- 8) Planning Commission Comments (including suggestions for next meeting agenda)
- 9) Adjournment

The Planning Commission consists of five members appointed by the Mayor and confirmed by the City Council. The Commission primarily considers plans and regulations relating to the physical development of the city, plus other matters as assigned. The Commission is an advisory body to the City Council.

All Commission meetings are open to the public and comments are welcome. Please be sure to be recognized by the Chair prior to speaking.

**CITY OF SEATAC
PLANNING COMMISSION
Minutes of November 17, 2015
Regular Meeting**

Members present: Joe Adamack, Roxie Chapin, Robert Scully
Members absent: Tom Dantzler, Jim Todd (both excused)
Staff present: Joe Scorcio, CED Director; Steve Pilcher, Planning Manager; Kate Kaehny, Senior Planner

1. Call to Order

Chair Adamack called the meeting to order at 5:35 p.m.

2. Approval of minutes

Moved and seconded to approve the minutes of the November 3, 2015 meeting as presented.
Passed 3-0.

3. Continued Public Hearing on Zoning Code Reformatting Project

Chair Adamack re-opened the public hearing at 5:36 p.m.

Senior Planner Kate Kaehny reviewed the project schedule with the Commission, noting that this will be introduced to the City Council at their November 24th study session. She highlighted three changes that were made to the document, based upon the direction received from the Commission. She also reviewed the new editing notes, noting that the Interim Angle Lake Station Area regulations (SMC 15.41) will not be included in this action. They will be integrated into the new format at the time they are presented for consideration and adoption.

Ms. Kaehny then reviewed the record of proposed changes that are recommended to occur to Division IV of the reformatted code. She discussed a conflict in standards between the Townhouse Zone and the standards chart, noting that the Code is written such that the Townhouse Zone supersedes in the event of a conflict. Staff is recommending eliminating the conflict as part of this action.

Finally, the draft Zoning Map was presented, noting some additional modifications that have occurred since the last meeting.

Chair Adamack opened the hearing for testimony at 5:56 p.m. No public was present to testify and the hearing was closed for testimony.

The Commission had no further questions of staff.

Moved and seconded to approve the seven recommended changes to Division IV. Passed 3-0.

Moved and seconded to approve the Zoning Map, subject to the changes recommended by staff. Passed 3-0.

Moved and seconded to approve the entire Reformatted Zoning Code. Passed 3-0.

CED Director reviewed the upcoming schedule for this proposal with the City Council.

4. Annual Report

Planning Manager Steve Pilcher introduced the draft annual report, noting that it covers the period from July 2014 through June 2015. Normally, this would be prepared in conjunction with the annual work program, but that did not occur this year.

The Commission asked the report be modified to note that, as part of its review, the Commission had recommended a large number of changes to the Comprehensive Plan and the Transportation Master Plan. They also asked the report reflect participation by a Commission member in the food innovation network/district work that is on-going.

Staff will make these modifications and email to the Commission for their review, prior to forwarding to the City Council.

5. CED Director's Report

CED Director Joe Scorcio announced that the Comprehensive Plan has received certification from the Puget Sound Regional Council. He also noted that the Segale rezone has received approval from the Hearing Examiner.

Mr. Scorcio and Mr. Pilcher provided some comments regarding a commemoration of 25 years of the Growth Management Act event they attended on November 13.

Mr. Scorcio then reviewed numerous CED items that will be in front of the City Council during their last 2 meetings of the year.

6. Planning Commissioners' comments

None.

7. Adjournment

Moved and seconded to adjourn. Motion passed 3-0. The meeting adjourned at 6:32 p.m.

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Code Amendments to Implement the 2015 Comprehensive Plan



SeaTac Planning Commission
December 1, 2015

Exhibit B
Date: 12/1/15

Background

- The Growth Management Act (GMA) requires:
 1. That certain development regulations are consistent with other state laws
 - E.g., critical areas regulations, and
 2. That development regulations implement the Comprehensive Plan's policies

Overview

Code amendments identified to implement the 2015 Comprehensive Plan come from 3 sources:

1. WA Department of Ecology (ECY) correspondence regarding critical areas regulations
2. WA Department of Commerce Growth Management Services (GMS) checklist
 - a) To assist cities in meeting all state requirements
3. Implementation strategies in adopted Comprehensive Plan

Critical Areas Regulations

1. Department of Ecology correspondence:
 - some of our critical areas regulations are out of date
 - Amendments to critical areas regulations must be completed by June 30, 2016 (per RCW 43.155; RCW 70.146)
 - We will bring these to you for review and recommendation early next year as the first priority in the Comprehensive Plan implementation process, due to the mandated deadline

Critical Areas Regulations

Those amendments include:

- Amendments to
 - Definition of *Wetland*
 - Definition of *Wetland Edge*
 - Definition of *Isolated Wetland*
 - Revisions to *Wetland Buffer* regulations
 - Revisions to *Wetland Mitigation* requirements

Critical Areas Regulations cont.

- Amendments to:
 - Protect *Critical Aquifer Recharge Areas* and *Ground Water Used For Public Water Supplies*
 - Add a definition for *Fish and Wildlife Habitat Conservation Areas* and include reference to *Anadromous Fisheries*

Other Amendments – GMS Checklist

2. Growth Management Services (GMS) provides a checklist to evaluate a city's regulations for consistency with all state requirements
 - In addition to the required amendments noted in the ECY correspondence, one additional amendment was identified through the GMS checklist:
 - Amend SMC Chapter 11.15 (Transportation Impact Fees) to include language to prohibit development if LOS standards can't be met

Other Amendments – Implementation Strategies

3. Staff reviewed the Comprehensive Plan's Implementation Strategies to identify other amendments needed to implement the Plan
 - Amendments are noted in most elements of the Plan
 - In total the Plan identifies 63 code amendments
 - Land Use (40%), Community Design (21%), Housing and Human Services (13%), Utilities (6%), Transportation (3%), PROS (3%), Economic Vitality (2%), Environment (2%)

Coordination with other Code Amendment Processes

Some of the 63 code amendments will be addressed through these processes:

- Angle Lake District Station Area regulations, and;
- Public Works' project to integrate Low Impact Development (LID) principles

Priorities

1. Critical Areas regulation amendments
(by 6/30/16)
2. Amendments identified through the GMS
Checklist (by 6/30/16)
3. Amendments identified through the Plan's
Implementation Strategies, as prioritized by the
Planning Commission

DRAFT Schedule (assumes current Council/Commission Schedules)

For the Critical Areas regulation amendments which must be adopted by 6/30/16*

All dates in 2016

Planning Commission Review	January - April
Public Hearing	April 19
Planning Commission Recommendation	May 3
Council Review.....	May 10
CSS	May 24
Council Action	June 14

* Council action may occur earlier if work is completed

END OF PRESENTATION

Code Amendments to Implement the 2015 Comprehensive Plan



SeaTac Planning Commission

December 1, 2015

Code Amendments to Implement the 2015 Comprehensive Plan



SeaTac Planning Commission
December 1, 2015

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Critical Areas Regulations cont.

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END OF PRESENTATION
Code Amendments to Implement
the 2015 Comprehensive Plan



SeaTac Planning Commission

December 1, 2015



MEMORANDUM

COMMUNITY & ECONOMIC DEVELOPMENT

Date: November 25, 2015
To: Planning Commission
From: Steve Pilcher, Planning Manager *SP*
Subject: Wireless Communication Facilities regulations

Federal law regarding local governments' ability to regulate wireless communication facilities (primarily cell phone technology) changed somewhat significantly in 2012. The changes were embedded in Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1455, the "Spectrum Act." Planning staff became aware of these changes in the past 6 months and was recently approached by a law firm representing AT&T, which is about to embark on major upgrades to its facilities in order to keep up with consumer demand. It is apparent from reading the Act and the subsequent interpretation promulgated by the Federal Communications Commission's (FCC) "Broadband Deployment Report and Order," that amendments to SeaTac's regulations are in order.

Wireless Communications Facilities (WCF) are addressed in Chapter 15.31 of the Zoning Code. (You may recall that, as part of the Zoning Code Reformatting project, this section was not proposed for any revisions other than renumbering; it's basically a "stand-alone" section). This code was initially adopted in 2004 in conjunction with a Wireless Telecommunications Master Plan. Although there have been periodic amendments since that date (as late as 2011), this chapter hasn't been updated in response to changing technology, consumer demand or federal regulations. [In terms of consumer demand, AT&T reports that data usage on its network has increased more than 100,000 percent since 2007.]

There are several major issues raised in the FCC rule that impact the City's current regulations. First, the rules provide a fairly broad exemption for modifications/upgrades to existing facilities. Local governments must approve (and may not deny) an Eligible Facilities Request that "does not result in a substantial change to the physical dimensions" of a tower or "base station." Eligible Facilities Requests include 1) collocation of new transmission equipment; 2) removal of transmission equipment; or 3) replacement of transmission equipment. A "substantial change" is one that: 1) increases the height of a tower by more than 10%, not to exceed 20 ft; 2) involves adding an appurtenance that protrudes more than 20 ft. from the edge of a tower or more than 6 ft. from other support structures (e.g., a water tower); and 3) other factors.

What this means in terms of our existing code is that there may be times we would require a conditional use permit for a proposal that, according to the FCC rules, must be permitted outright. This issue has already arisen with one recent proposal.

A corollary issue in the rules is a limitation that jurisdictions must conduct their land use review of a proposed modification/upgrade within 60 days of receipt of an application. Currently, our practice is to require the submittal of a WCF worksheet, which is reviewed by Planning and Building staff to determine what other permits may be required (both land use and building/electrical). This typically takes 1-2 weeks to complete. If a determination is made that a conditional use permit is required, it is very difficult to complete that process within the 60 day time limitation imposed by the section.

The representative from AT&T has noted that various other portions of our code are outdated and do not reflect current technology needs of the industry. He also has advised us of work occurring in other jurisdictions where codes are being updated to ensure compliance with the FCC rule.

Finally, we may need to consider adding an exemption for "Bird Safety/Exclusionary" devices. (This concern has been raised by staff at the Port). In order to add these features, the height limitations for towers may need to be exceeded. This is especially important for towers in the vicinity of the airport. The intent is to prevent birds from roosting on cell towers and thereby become a hazard to air traffic.

So far this year, we've averaged about one WCF application per month; these have all been replacement and upgrades to existing facilities. However, as AT&T is anticipating major equipment upgrades in 2016, it is likely staff will receive similar requests from other carriers. The industry keeps evolving as consumer demand increases and it is anticipated to require continued land use entitlements and permits.

Fortunately, several other jurisdictions in the state have begun to update their regulations, so we have examples from which to work. Staff will begin to draft amendments to our regulations and will invite comments from and participation of industry representatives as the Commission begins to consider changes. At this time, it would be helpful to know if there are specific issues the Commission wishes to have addressed as part of this process.

Attachments: Public Notice from the FCC
Information sheet from NACO, NLC & NATOA



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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(a), *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.

Wireless Telecommunications Bureau contact: Maria Kirby at (202) 418-1476 or by email: Maria.Kirby@fcc.gov.

-FCC-

For more news and information about the Federal Communications Commission please visit: www.fcc.gov

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

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.



Wireless Facility Siting: Model Chapter Implementing Section 6409(a) and

Wireless Facility Siting: Section 6409(a) Checklist

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 mandates that a State or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. In October 2014, the Federal Communications Commission unanimously approved rules interpreting Section 6409(a).

In an effort to assist jurisdictions with limited resources to comply with the new rules, wireless industry associations PCIA and CTIA affirmatively committed to working with local government associations – the National League of Cities, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors – to: 1) develop a model ordinance and application for reviewing eligible facilities requests under Section 6409(a); 2) distribute wireless siting best practices; 3) create a checklist that local government officials can use to help streamline the review process; and 4) hold webinars regarding the application process.

As we have made clear, neither the model ordinance nor checklist is intended to provide legal advice; we strongly encourage jurisdictions to consult with an attorney on legal matters. Further, neither the model ordinance nor checklist imposes any legal obligation whatsoever on any jurisdiction. These documents are meant only to provide a framework that jurisdictions may voluntarily use to determine if their current wireless siting review process complies with the FCC's new rules.

The FCC rules do not require jurisdictions to use or adopt these documents. Some localities may need to revise their existing local laws to the extent that they conflict with the new rules. Some localities with consistent local laws or no laws that regulate wireless deployments may not need to take any legislative action for compliance.

Some may view the model ordinance and checklist as overly broad or too narrow in scope. The presence or absence of any provision or item should not be seen as either an express endorsement or rejection of the provision or item. Again, these documents are not intended to provide legal advice.

Legal or regulatory action challenging the FCC's rules may be taken. In the event any such efforts result in a change in the rules, we will notify our members of such via websites, publications, and all other appropriate means.

Finally, if your jurisdiction has an ordinance or checklist implementing Section 6409(a) and the FCC's rules, please send it to Julia Pulidindi at: Pulidindi@nlc.org. We will make these materials available to our members. In addition, in preparation for the development of *voluntary* wireless broadband facilities siting best practices, we encourage you to share your experiences in dealing with the new rules with us. Tell us what works, what doesn't, and how the process could be made better.

Wireless Facility Siting: Model Chapter Implementing Section 6409(a)

Note: Use of this model chapter is voluntary. It is meant to provide a framework for those jurisdictions needing assistance in complying with Federal timeframes to act on Eligible Facilities Requests for modifications to existing wireless towers or base stations that do not substantially change the physical dimensions of such towers or base stations. This document is not intended to provide legal guidance; jurisdictions are encouraged to consult an attorney on legal matters.

I. PURPOSE

This Chapter implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”),¹ as interpreted by the Federal Communications Commission’s (“FCC” or “Commission”) Acceleration of Broadband Deployment Report & Order,² which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

II. DEFINITIONS³

For the purposes of this Chapter, the terms used have the following meanings:⁴

- a. *Base Station*. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:
 - i. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).
 - iii. Any structure other than a tower that, at the time the relevant application is filed with [jurisdiction] under this section, supports or houses equipment described in paragraphs (a)(i)-(a)(ii) that has been reviewed and approved

¹ Middle Class Tax Relief and Job Creation Act of 2012, 112 Pub. L. 96, *codified at* 47 U.S.C. 1455.

² Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Report and Order*, 29 FCC Rcd 12865 (2014) (“2014 Infrastructure Order”).

³ These definitions were adapted from the FCC’s own definitions. *See generally* 47 CFR § 1.40001(b). For a discussion of these definitions, see 2014 Infrastructure Order ¶¶ 145-204.

⁴ A jurisdiction may wish to incorporate these definitions, which are specific to Section 6409(a), into its wireless facilities ordinance more broadly; alternatively, these can be stand-alone definitions solely for Eligible Facilities Requests under Section 6409(a).

under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with [jurisdiction] under this section, does not support or house equipment described in (a)(i)-(ii) of this section.

- b. *Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- c. *Eligible Facilities Request.* Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - i. Collocation of new transmission equipment;
 - ii. Removal of transmission equipment; or
 - iii. Replacement of transmission equipment.
- d. *Eligible support structure.* Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with [jurisdiction] under this section.
- e. *Existing.* A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.
- f. *Site.* For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted t that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- g. *Substantial Change.* A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
 - i. For towers other than towers in the public rights-of-way, it increases the 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; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;⁵

⁵ 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 tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. 47 CFR § 1.40001(b)(7)(i)(A).

- ii. 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;
 - iii. For any 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 base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 - iv. It entails any excavation or deployment outside the current site;
 - v. It would defeat the concealment elements of the eligible support structure; or
 - vi. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (g)(i)-(g)(iv) of this section.⁶
- h. *Transmission Equipment.* Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- i. *Tower.* Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

⁶ See 2014 Infrastructure Order ¶ 200. This section identifies the limited number of prior conditions of site approval that may not be used to determine whether a modification qualifies as a substantial change. *Id.*

III. APPLICATION REVIEW⁷

- a. *Application.* [Jurisdiction] shall prepare and make publicly available an application form which shall be limited to the information necessary for [jurisdiction] to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.
- b. *Type of Review.* Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, [identify appropriate department– e.g., Public Works, Planning] shall review such application to determine whether the application so qualifies.⁸
- c. *Timeframe for Review.* Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, [jurisdiction] shall approve the application unless it determines that the application is not covered by this Chapter.
- d. *Tolling of the Timeframe for Review.* The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the applicant, or in cases where [jurisdiction’s reviewing body] determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
 - i. To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.
 - ii. The timeframe for review begins running again when the applicant makes a supplemental submission in response to [jurisdiction’s] notice of incompleteness.
 - iii. Following a supplemental submission, [jurisdiction] will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- b. *Interaction with Section 332(c)(7).*⁹ If [jurisdiction] determines that the applicant’s request is not covered by Section 6409(a) as delineated under this Chapter, the

⁷ This section was adapted from the FCC’s rules. *See generally* 47 CFR § 1.40001(c). For a discussion of application review processes, see 2014 Infrastructure Order ¶¶ 205-236.

⁸ The jurisdiction may wish to review whether existing processes meet the requirements of the 2014 Infrastructure Order. *See, e.g.*, 47 CFR § 1.40001(c)(1); 2014 Infrastructure Order ¶ 214.

⁹ *See* 47 U.S.C. § 332(c)(7); *In re* 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

presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of [jurisdiction's] decision that the application is not a covered request. To the extent such information is necessary, [jurisdiction] may request additional information from the applicant to evaluate the application under Section 332(c)(7)¹⁰, pursuant to the limitations applicable to other Section 332(c)(7) reviews.¹¹

- c. *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
- d. *Remedies.* Applicants and [jurisdiction] may bring claims related to Section 6409(a) to any court of competent jurisdiction.

All Wireless Siting Proposals as Requiring a Variance, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) ("Shot Clock Ruling"), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-99A1_Rcd.pdf.

¹⁰ See 2014 Infrastructure Order ¶ 220. For example, an applicant may submit a request for review under Section 6409(a) asserting the modification does not substantially change the physical dimensions of the facility, when in fact the application proposes a substantial change and is therefore not covered under Section 6409(a). *See id.*

¹¹ See 2014 Infrastructure Order ¶¶ 258-260 (prescribing limits on application review and tolling for applications under Section 332(c)(7)).

Developing Standards for the Angle Lake District



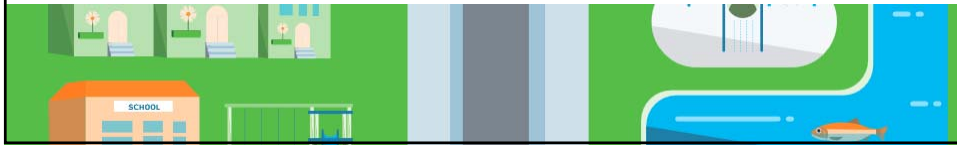
Background

- Jan, 2014: Council adopted Interim development standards for Angle Lake Station Area.
- June 30, 2016: Standards expire
- July, 2015: Council Adopted Angle Lake Station Area Plan
- Late 2016: Light rail anticipated to begin
- Since Inception: 2 developments approved in Angle Lake Station Area

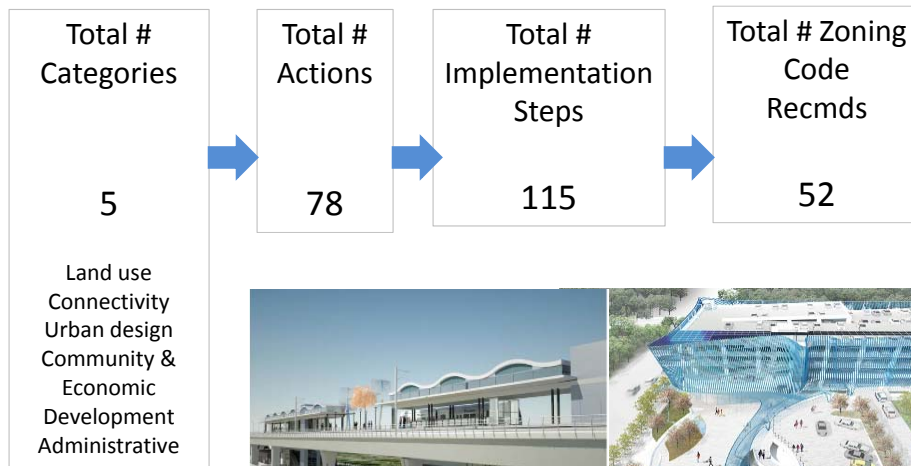


Angle Lake Station Area Plan Refresher

- Plan aims to optimize opportunities arising from new AL Station
- Provides a strategy for co-ordinated improvements
 - ✓ Create a ped-friendly, transit oriented community
 - ✓ Create a District Center as a focal point
 - ✓ Encourage diverse housing types & businesses
- Area is app. 171 acres:
 - 38% commercial use, 33% vacant area, 14% residential uses



Preparing New Standards A LOT OF WORK TO DO!



Challenges & Opportunities	
Challenges	Opportunities
<ul style="list-style-type: none"> • Provide developer certainty without excessive regulation • Conflicts can occur between commercial bld needs & providing ped friendly experiences • Port of Seattle property subject to Interlocal Agreement • Create an incentive based code rather than overly prescriptive based standards 	<ul style="list-style-type: none"> • Many community assets – park, trail, school, fire station, transit • Can provide for an innovative urban design, flexibility of land uses, creative design • Work with developers and community to reach best design solutions • Create new connections • Standards to create 'sense of place' • Create an incentive based code rather than overly prescriptive based standards

What Standards are we Looking at Specifically?			
Use charts – what's permitted and where?	Circulation & Connectivity	Site Planning	Building Design
Urban Design	On site Open Space	Parking	Landscaping

Proposed List of Activities to be Undertaken

Currently reviewing existing standards & what exists in other overlays

Staff working group review & propose standards (agree project goals, review existing standards)

PC Review & Feedback throughout project

Outreach to community, major landowners, stakeholders

Finalize standards

Commence administrative adoption process

