

ORDINANCE NO. 3649

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING AND LAND USE AND AMENDING ORDINANCE 2740, AS AMENDED, THE KIRKLAND ZONING ORDINANCE, AMENDING SECTIONS 5.10.745, 115.60, AND 162.35 AND ADDING A NEW CHAPTER 117 TO THE KIRKLAND ZONING CODE RELATING TO PERSONAL WIRELESS SERVICE FACILITIES AND OTHER WIRELESS COMMUNICATIONS FACILITIES (FILE NO. IV-97-97)

WHEREAS, the City Council has received from the Kirkland Planning Commission a recommendation to amend certain sections of the text of the Kirkland Zoning Code, Ordinance 2740 as amended, all as set forth in that certain report and recommendation of the Planning Commission dated May 21, 1998 and bearing Kirkland Department of Planning and Community Development File No. IV-97-97;

WHEREAS, prior to making said recommendation, the Planning Commission, following notice thereof as required by RCW 35A.63.070, on April 9, 1998, held a public hearing on the amendment proposals and considered the comments received at said hearing;

WHEREAS, pursuant to the State Environmental Policies Act there has accompanied the legislative proposal and recommendation through the entire consideration process, a determination of nonsignificance, including supporting environmental documents, issued by the responsible official pursuant to WAC 197-11-340 and WAC 197-11-390;

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the report and recommendation of the Planning Commission;

WHEREAS, Section 704 of the federal Telecommunications Act of 1996, 47 USC Sec. 332(c)(7), provides that units of local government may, pursuant to their inherent zoning authority, regulate the placement, construction and modification of personal wireless service facilities, provided that the unit of local government does not unreasonably discriminate among providers of functionally equivalent services, or prohibit or have the effect of prohibiting the provision of personal wireless services;

WHEREAS, the City Council finds that personal wireless service facilities may require large structures or towers, whose height and footprint may not be compatible, as a matter of sound urban planning, with adjoining residential uses;

WHEREAS, the City Council wishes to encourage co-location of antennas on existing towers, at all times taking into account the use of concealment technology;

WHEREAS, the residential character of the City and availability of views within the City are important to the residents of the City;

WHEREAS, the unregulated siting of personal wireless service facilities may have the effect of reducing the residential character of the City and impairing views;

WHEREAS, the City Council finds that the public interest is best served by enacting specific siting regulations which will encourage visual compatibility of personal wireless service facilities in all zoning areas and the placement of which will least likely adversely affect the sites or surrounding areas;

WHEREAS, zoning districts in the City are currently classified as set forth in Chapters 15-65 of the Kirkland Zoning Code; and

WHEREAS, the City has adopted a Comprehensive Plan and the City wants to take actions which are consistent with that Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland, Washington as follows:

Section 1. Adoption. A new Chapter 117 of the Kirkland Zoning Code is added to the text of Ordinance 2740, as amended, and is adopted as follows:

CHAPTER 117 - PERSONAL WIRELESS SERVICE FACILITIES

117.05:	Definitions
117.10:	Policy Statement
117.15:	New and Existing Facilities
117.20:	Priority of Locations
117.25:	Co-Location
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117.40:	Non-Use/Abandonment
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117.05: DEFINITIONS

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below:

1. **"Antenna"** shall mean any exterior apparatus designed for telephonic, radio, data, Internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole, light standard, building or other structure for the purpose of providing personal wireless services and its attendant base station. Types of antennas include:

- a. An omni-directional antenna receives and transmits radio frequency signals in a 360 degree radial pattern. For the purposes of this chapter, a whip antenna is an omni-directional antenna that is up to 15 feet in height and up to four inches in diameter.
- b. A directional or panel antenna receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.

2. **"Antenna Height"** shall mean the vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. Measurement of antenna height shall include the base pad, support structure, antenna, lightning rods, and other appurtenances.

3. **"Cell Site"** shall mean a tract or parcel of land or building that contains the personal wireless service facilities including any antenna, antenna support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

4. **"Co-location"** shall mean the use of a common personal wireless service facility or tower by two or more personal wireless service providers or by one personal wireless service provider for more than one type of communication technology.

5. **"Equipment Structure"** shall mean a facility, shelter, cabinet or vault used to house and protect the electronic equipment necessary for processing wireless communications signals. Associated equipment may include, for example, air conditioning, backup power supplies and emergency generators.

6. **"Existing Structure"** shall mean, but is not limited to, a building, electrical transmission tower, flagpole, light standard, utility pole, water tank, and accessory structures thereto.

7. **"FAA"** shall mean the Federal Aviation Administration.

8. **"FCC"** shall mean the Federal Communications Commission.

9. **"Non-Residential"** or "non-residential zone" shall mean (1) all portions of the City in an area not zoned residential as defined in this Chapter or (2) I-405 right-of-way .

10. **"Personal Wireless Services"** and **"Personal Wireless Service Facilities,"** as used in this Chapter, shall be defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as they may be amended now or in the future.

11. **"Residential"** shall mean portions of the City in the following zones: RS 35; RSX 35; RS 12.5; RSX 12.5; RS 8.5; RSX 8.5; RS 7.2; RSX 7.2; RS 5.0; RSX 5.0; RM 5.0; RM 3.6; RM 2.4; RM 1.8; WD-I; WD-II; WD-III; PLA 1; PLA 2; PLA 5 A, D, E; PLA 6A, C, D, E, F, H, I, J, K; PLA 7 A, B, C; PLA 9; PLA 15B; PLA 16 and P.

12. **"Tower"** shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including any antenna support structure, self-supporting lattice towers or monopole towers and does not include utility poles.

117.10: POLICY STATEMENT

The City has received requests to site towers and antennas. The purpose of this Chapter is to provide specific regulations for the placement, construction, modification and removal of personal wireless service facilities. Pursuant to the guidelines of Section 704 of the federal Telecommunications Act of 1996, 47 USC Sec. 332(c)(7), the provisions of this Chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent personal wireless services. The goals of this Chapter are to: (i) encourage the location of towers in non-residential areas and to minimize the total number of tall towers throughout the City, (ii) encourage the joint use of existing tower sites, (iii) encourage users of towers and antennas to locate them, to the extent possible, in areas where the impact on the City is minimal, (iv) encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas, (v) strongly encourage the providers of personal wireless services to use concealment technology, (vi) provide standards for the siting of personal wireless service facilities and other wireless communications facilities (such as television and AM/FM radio towers), and (vii) facilitate the ability of the providers of personal wireless services to provide such services throughout the City quickly, effectively and efficiently. Accordingly, the City Council finds that the promulgation of this Chapter is warranted and necessary:

1. To manage the location of towers and antennas in the City;
2. To protect residential areas and other land uses from potential adverse impacts of towers and antennas;
3. To minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;
4. To accommodate the growing need for towers and antennas;
5. To promote and encourage shared use and co-location on existing towers as a desirable option rather than construction of additional single-use towers; and
6. To avoid potential damage to adjacent properties through engineering and proper siting of personal wireless service facilities.

117.15: NEW AND EXISTING FACILITIES

1. New Facilities: All new personal wireless service facilities, including without limitation antennas and towers, and replacement of personal wireless service antennas and towers, shall comply with this Chapter unless the applicant had a vested application to site a personal wireless service facility under a prior version of this Code.

2. Existing Facilities: All personal wireless service facilities, including without limitation antennas and towers shall be allowed to continue their usage as they presently exist as of the effective date of this Chapter. Routine maintenance and reconfiguration of antennas shall be permitted on such existing antennas and towers. However, any reconfiguration that increases antenna height shall be treated like a new facility.

117.20: PRIORITY OF LOCATIONS

1. An application to site a personal wireless service facility shall be subject to the criteria contained in the table below. Only when the application does not meet a criteria, shall the next group of criteria be considered. The hierarchy of criteria is divided into three separate approval processes: Administrative Decision, Process I Permit and Process IIB Permit. The order of criteria for locating personal wireless service facilities shall be as follows:

<p>a. Administrative Decision</p>	<p>1) Co-location of antennas on personal wireless service towers in non-residential zones.</p> <p>2) Attachment of antennas to existing structures in non-residential zones:</p> <ul style="list-style-type: none"> • whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet; • otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and • all appurtenances and screening (including personal wireless service facilities) may not exceed 5% of the total roof area of a building and/or 5% of any facade of a building <p>3) Equipment structures may not exceed 500 cubic feet with a 5 foot height limit in residential zones</p> <p>4) Antennas may be attached to ball field light standards, electrical transmission towers, water tanks or existing utility poles in residential zones. Whip antennas may exceed the structure height by a maximum of 15 feet and other antennas may exceed the structure height by a maximum of 10 feet.</p>
<p>b. Process I Permit</p>	<p>1) New personal wireless service towers and associated equipment in non-residential zones:</p> <ul style="list-style-type: none"> • located at least a distance equal to 100% of antenna height from any property line adjacent to or across the street from a residential use or residential zone • antenna height is a maximum of 40 feet <p>2) Attachment of antennas to existing structures in non-residential zones:</p> <ul style="list-style-type: none"> • whip antennas may exceed the structure height by a maximum of 15 feet, and other omni-directional antennas may exceed the structure height by a maximum of 10 feet; • otherwise, facilities may be mounted on one or more building facades or on one or more sides of a mechanical equipment enclosure; and • all appurtenances and screening (including personal wireless service facilities) may not exceed 10% of the total roof area of a building and/or 10% of any facade of a building
<p>c. Process IIB Permit</p>	<p>1) Any personal wireless service facility that is unable to meet the preceding priority of locational criteria for an Administrative Decision or Process I Permit; see also Section 117.70</p>

2. Further Process II B Permit Requirements: An applicant for a new facility to be located in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed facility in a non-residential zone, and that due to valid considerations including physical constraints, or technological feasibility, no other location is available. The personal wireless services provider is required to demonstrate that it contacted the landowners or owners of structures in excess of thirty feet (30') within a one-quarter mile radius of the site proposed, asked for permission to build the personal wireless service tower or install the antenna on an existing structure, and was denied. The information submitted by the applicant shall include a map of the area to be served by the facility, its relationship to other sites in the applicant's network, and an evaluation of existing available land, and buildings and structures taller than thirty feet (30') within one-quarter mile of the proposed site.

117.25: CO-LOCATION

To minimize potential adverse visual impacts associated with towers, co-location of antennas by more than one provider on personal wireless service towers shall take precedence over the construction of new personal wireless service towers. Providers are encouraged, by the opportunity for expedited review as provided in this Chapter, to co-locate antennas onto personal wireless service towers. Unless the applicant has shown by substantial evidence that it has made a good faith effort to mount the antenna on an existing personal wireless service tower, the City may deny the application to construct a new personal wireless service tower.

117.30: DESIGN STANDARDS

1. The location and design of sites in the City shall consider the visual and physical impact of the site on the surrounding neighborhood .

2. Facilities shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location and design, to blend in with the existing characteristics of the site to the maximum extent practical.

3. Concealment Technology: Concealment technology applies to all personal wireless service facilities, including without limitation, antennas, towers and equipment structures. For any facility, concealment technology means the use of both existing and future technology through which a personal wireless service facility is designed to resemble an object which is already present in the local environment, such as a tree, streetlight, or traffic signal. It also includes:

a. For personal wireless service towers:

If within existing trees, concealment technology means that the tower is to be painted a dark color, is made of wood or metal, and that a greenbelt easement is required to ensure permanent retention of the surrounding trees.

Concealment technology for towers in a more open setting means that they must have a backdrop (for example, but not limited to trees, a hillside, or a structure) on at least two sides, be a compatible color with the backdrop, be made of compatible materials with the backdrop, and that architectural or landscape screening be provided for the other two sides. If existing trees are the backdrop, then a greenbelt easement is required to ensure permanent retention of the surrounding trees.

In all cases where a greenbelt easement is required, it shall be the minimum necessary to provide screening and may be removed at the landowner's request in the event the facility is removed.

Antennas shall be integrated into the design of any personal wireless service tower to which they are attached. External projections from the tower shall be limited to the greatest extent technically feasible.

- b. For rooftop antennas or antennas mounted on other structures:

For omni-directional antennas 15 feet or less above the roof, concealment technology means use of a color compatible with the roof, structure or background.

For other antennas, concealment technology means use of compatible colors and architectural screening or other techniques approved by the City.

Antennas shall be integrated into the design of any existing structure or support structure to which they are attached. External projections from the existing structure or support structure shall be limited to the greatest extent technically feasible.

- c. For antennas mounted on one or more building facades:

Concealment technology means use of color and materials such that the facility has architectural compatibility with the building. It shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted.

- d. For equipment structures:

Concealment technology means locating within a building, or if on top of a building, with architecturally compatible screening. An underground location, or above ground with a solid fence and landscaping are also considered concealment technologies.

4. Setbacks: Ground mounted personal wireless service facilities shall be located at least a distance equal to 100% of antenna height from any property line adjacent to or across the street from a residential use or residential zone; and a minimum of 10 feet from any property line adjacent to or across the street from all other uses or zones.

5. Views: Personal wireless service facilities, including towers, must be located and oriented in such a way as to minimize view blockage.

6. Lights, Signals and Signs: No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.

7. Equipment Structures: The standards for equipment structures are as follows:

- a. Equipment structures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.
- b. Gross floor area shall be the minimum necessary but not greater than 240 square feet per provider. Maximum height is 10 feet above average building elevation.
- c. Equipment structures shall be oriented so that exhaust ports or outlets are pointed away from properties which may be impacted by noise. Equipment shall comply with noise regulations in Section 115.95 of this Code. The City may require an assessment of noise after operation begins and

remediation if the noise levels created are not within the prescribed limits. Cumulative noise impacts will be measured in cases where there is more than one equipment structure.

8. Federal Requirements: All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Chapter shall bring such towers and antennas into compliance with such revised standards and regulations in accordance with the compliance deadlines and requirements of such standards and regulations. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense. Additionally, if, upon inspection, the City concludes that a tower fails to comply with such regulations and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards and regulations. If the owner fails to bring such tower into compliance within said thirty (30) days, the City may remove such tower at the owner's expense.

9. Tower and Antenna Height: The applicant shall demonstrate that the tower and antenna are the minimum height required to function satisfactorily. Personal wireless service towers shall not exceed 40 feet in residential zones.

10. Antennas and equipment structures on or above a structure shall be subject to the following criteria:

- a. Antenna and equipment structure height is measured above the top of the roof, not the parapet.
- b. Only omni-directional antennas may be roof-mounted. No panel or directional antennas may be mounted on roofs.
- c. All roof-mounted antennas must be set back from the edge of the roof a distance equal to 100% of antenna height.
- d. Roof-mounted antennas and equipment structures shall be incorporated into the pitched or stepped roof form, and not appear as a separate penthouse or box.

- e. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered.
- f. Antennas may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.
- g. In no instance shall equipment structures, antenna and related equipment occupy more than 25% of the total roof area of a building.
- h. No antennas shall be permitted on property designated as a historic resource or community landmark as identified in the Comprehensive Plan, unless such antennas have been approved in accordance with design requirements pertaining to historic structures.
- i. No antennas shall cause localized interference with the transmission or reception of any other communications signals including, but not limited to public safety signals, and television and radio broadcast signals.
- j. No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by the UBC to anchor the antennas, antenna arrays or support structures.

117.35: LANDSCAPING/BUFFERING

1. General: Landscaping, as described herein, shall be required to screen as much of the new personal wireless service tower as possible, the fence surrounding both the tower and any other ground level features (such as an equipment structure), and in general soften the appearance of the site. The City may require any other form of concealment technology if it achieves the same degree of screening as the required landscaping. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's discretion, taking into consideration the site as-built. If the antenna is mounted on an existing building, and the equipment structure is housed inside the building, landscaping shall not be required.

2. Existing vegetation: Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance will result in less visual impact of the site on the surrounding area.

3. Buffering: Buffering of ground-mounted personal wireless service facilities shall be required around the perimeter of the facility. Landscape buffering shall at a minimum comply with the requirements of Zoning Code Section 95.25.3, except that all trees must be evergreen.

4. Fencing: Fencing may be allowed or required if it is needed for security purposes, or if it is part of concealment technology. The use of chain link, plastic, vinyl or wire fencing is prohibited unless it is fully screened from public view. Landscaping shall be installed on the outside of fences.

5. Maintenance: In the event that landscaping is not maintained at the required level, the City, after giving thirty (30) days advance written notice to the provider, may maintain or establish the landscaping and bill both the landowner and provider for such costs until such costs are paid in full.

117.40: NON-USE/ABANDONMENT

1. Bond: The City may require a bond as per Chapter 175 of this Code to cover the costs of removal of the antenna or tower.

2. Annual Report: The provider must confirm in writing to the City on an annual basis that the personal wireless service facility is still in use on a form to be provided by the City.

3. In the event the use of any tower or antenna will be discontinued for a period of sixty (60) consecutive days, the owner or operator shall so notify the City in writing, and the tower or antenna shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and affidavits from the tower or antenna owner or operator regarding the issue of tower or antenna usage. Upon such abandonment, the owner or operator of the tower or antenna or the owner of the property upon which such facility is located shall have an additional sixty (60) days within which to:

- a. Reactivate the use of the tower or antenna or transfer the tower or antenna to another owner or operator who makes actual use of the tower or antenna; or

- b. Dismantle and remove the tower or antenna. If such tower or antenna is not removed within said sixty (60) days from the date of abandonment, the City may remove such tower or antenna at the facility owner's and property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval for the tower or antenna shall automatically expire.

117.45: APPLICATION REQUIREMENTS

In the course of reviewing any request for any approval required under this Chapter made by an applicant to install personal wireless service facilities, the City shall act within a reasonable period of time, taking into account the nature and scope of the request, after an application has been determined to be complete. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

All applications for Administrative Decision, Process I and Process IIB Permits to locate a personal wireless service facility (including, but without limitation, an antenna or tower in the City) shall be submitted to the Planning Department with the applicable requested information (depending upon the type of facility which is involved). A detailed plan that complies with the submittal requirements of this Chapter, and other regulations and ordinances of the City, along with other pertinent information requested by the City shall also be submitted. An applicant's submission may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information depending upon the type of facility which is involved:

1. All applicants must register their request with the City on a form provided by the City at the time of building permit or right-of-way use permit application.
2. A scaled site plan clearly indicating the location, type and height of the proposed tower, antennas, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, the equipment structure, fencing, buffering and the type of concealment technology which will be utilized. The full,

detailed site plan shall not be required if the antenna is to be mounted on an existing structure.

3. Photosimulations of the proposed facility from affected residential properties and public rights-of-way.

4. A current map and/or aerial photograph showing the location of the proposed tower.

5. Legal description of the parcel, if applicable.

6. Approximate distance between the proposed tower and antennas, as applicable, and the nearest residential unit, or residentially zoned properties.

7. Information of sufficient detail to demonstrate that the equipment structure is the minimum size necessary.

8. A landscape plan showing specific landscape, screening and fencing materials.

9. A notarized letter signed by the applicant stating that the personal wireless service facilities will comply with all applicable federal and state laws, including specifically FCC and FAA regulations, and all City codes.

10. A notarized letter signed by the applicant stating that the antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.

11. Manufacturers information indicating compliance with adopted noise standards.

12. The personal wireless services provider must demonstrate that it is licensed by the FCC, if required to be licensed under FCC regulations.

13. The applicant, if not the personal wireless services provider, shall submit proof of a lease agreement with an FCC licensed personal wireless services provider if such provider is required to be licensed by the FCC.

14. Propagation maps shall be provided showing that the tower and antennas are required for present and future network coverage in order to satisfy the requirements of the provider's grid system. The maps shall also demonstrate that the height specified is the minimum height necessary for the tower and antennas, as

applicable. The maps shall additionally show coverage areas at the requested height and at lower heights. Finally, they shall show the neighboring or regional facilities with which the facilities in the City can communicate.

15. If the site is within or adjacent to a residential zone, then a study shall be provided showing why alternative locations are not acceptable.

16. All providers shall submit satisfactory evidence that the facility is designed for and will provide services primarily for residents of the City and/or visitors within City limits.

17. See also Section 117.20.2, Further Process IIB Permit Requirements and 117.50 Third Party Review.

117.50: THIRD PARTY REVIEW

In certain instances (including all Process IIB Permit applications) there may be a need for expert review by a third party of the technical data submitted by the personal wireless services provider. The City may require such a technical review, to be paid for by the applicant for the personal wireless service facilities. The selection of the third party expert shall be by mutual agreement between the applicant and the City, such agreement not to be unreasonably withheld by either party. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering. The expert review is intended to be a site-specific review of technical aspects of the personal wireless services, facilities and other matters as described herein, and not a subjective review of the site selection. In particular, but without limitation, the expert shall be entitled to provide a recommendation on the height of the proposed facilities relative to the applicant's coverage objectives and system design parameters. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the City or other interested parties. Based on the results of the third party review, the City may require changes to the application for the personal wireless service facilities that comply with the recommendations of the expert.

117.55: PERMIT REQUIREMENT

In all instances, a permit must be obtained from the City before any personal wireless service facilities may be constructed within the City.

117.60: VIOLATIONS AND CITY REMEDIES

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Chapter 170, Code Enforcement, of this Code. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this Chapter and all other remedies provided at law or in equity.

117.65: OTHER WIRELESS COMMUNICATIONS FACILITIES

All of the provisions of this Chapter, which address personal wireless services and personal wireless service facilities, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television and AM/FM radio towers) to the maximum extent allowed by law.

117.70: MODIFICATIONS

Provisions of this Chapter shall not be subject to Variances described in Chapter 120 of this Code. However, through Process IIB, Chapter 152, the City may consider modification of standards in the Chapter except for:

1. The 40 foot height limit for personal wireless service facilities in residential zones; and/or
2. A 20 foot minimum distance between a ground-mounted personal wireless service facility and any property line adjacent to or across the street from a residential use or residential zone.

117.75: APPEALS

Appeals of Administrative Decisions shall be processed according to the appeal procedures for Process I except that any affected party may appeal and participate in the appeal; the time to appeal is taken from the date of Administrative Decision; and distribution of the appeal hearing notice by the Planning Official shall be to the applicant, appellant, the official newspaper of the City, and posted on public notice sign(s).

Appeals of Process I or IIB permits are processed according to the appeal procedures for either Process I or IIB respectively.

117.80: CONFLICT

To the extent that any provision or provisions of this Chapter are inconsistent or in conflict with any other provision of the Zoning Code,

Comprehensive Plan or any ordinance or regulation of the City, the provisions of this Chapter shall be deemed to control. Personal wireless service facilities are permitted in the City pursuant to this Chapter notwithstanding the fact they are not mentioned in the Use Zone Charts in Chapters 15-65 of this Code.

Section 2. Amendment. Chapter 5 of the Kirkland Zoning Code is amended as follows:

5.745 Public Utility - A private business organization such as a public service corporation, including physical plant facilities, performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include but are not limited to: water supply, electric power, telephone, ~~cablevision~~ television, gas and transportation for persons and freight. For the purposes of this Code, public utility does not include personal wireless service facilities as defined in Section 117.05 Definitions of the Kirkland Zoning Code.

Section 3. Amendment. Chapter 115 of the Kirkland Zoning Code is amended as follows:

As set forth in Attachment A which by this reference is incorporated herein.

Section 4. Amendment. Chapter 162 of the Kirkland Zoning Code is amended as follows:

162.35.10 Personal Wireless Service Facilities

Existing or non-conforming personal wireless service facilities are governed by Section 117.15 New and Existing Facilities of the Kirkland Zoning Code.

Section 5. Review. Approximately one year from the date of passage of this Ordinance, the City shall review the provisions of Chapter 117 and prepare and adopt amendments, if needed.

Section 6. Severability. Should any section, paragraph, sentence, clause, phrase or word of this Chapter be declared invalid or unconstitutional by a court or agency of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases or words of this Chapter, all of which will remain in full force and effect.

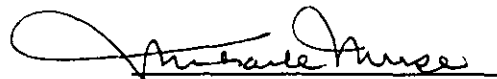
Section 7. To the extent the subject matter of this Ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this Ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this Ordinance within 60 days of the date of the passage of this Ordinance.

Section 8. Adoption. Except as provided in Section 7, this Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, pursuant to Section 1.08.017 Kirkland Municipal Code, in the summary form attached to the original of this Ordinance and by this reference approved by the City Council, as required by law.

Section 9. A complete copy of this Ordinance, including Findings, Conclusions and Recommendations adopted by reference, shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this 11th day of August, 1998.


SIGNED IN AUTHENTICATION thereof this 11th day of August, 1998.


Mayor

Attest:


Deputy City Clerk

Approved as to Form:


City Attorney

wireless/wire8/hc

1. General - No element or feature of a structure, other than as listed in paragraph 2 of this Section, may exceed the applicable height limitation established for each use in each use zone in Chapters 15 through 65 of this Code.

2. Exceptions

a. Detached Dwelling Units

1) Vents and chimneys for a detached dwelling unit may exceed the maximum height limit.

to the extent they do not constitute personal wireless service facilities, which are subject to the provisions of Chapter 117 of this Code,

2) Rod, wire and dish antennas may not be placed above the maximum height allowed for any structure unless approved by the Planning Director. The City will approve the application if it can be demonstrated that views across the subject property are not substantially impaired and that the antenna must be placed above the roofline in order to function properly. The decision of the Planning Director in approving or denying a rod, wire, or dish antenna may be appealed using the appeal provision, as applicable, of Process I, Sections 145.55 through 145.110.

For the purposes of this paragraph, "dish antenna" includes any antenna, whether or not it is of solid or mesh construction, designed or constructed so that the horizontal dimension of its microwave reflector or collector face equals or exceeds 30 percent of its vertical dimension. The phrase "rod or wire antenna" includes those antennas not falling within the definition of dish antenna and antennas for use by licensed amateur radio operators.

b. Other Structures

1) Rooftop appurtenances for all structures other than detached dwelling units may exceed the applicable height limitation by a maximum of four (4) feet if the area of all appurtenances and screening does not exceed 10 percent of the total area of the building footprint. These structures must be located in such a way as to minimize view blockage.

2) Appurtenances that do not meet the standards of paragraph (1) above, may be permitted if the Planning Official determines that, based on accurate graphic representations provided by the applicant, views from adjacent properties will not be significantly blocked.

3) Any appurtenance, other than chimneys and antennas, must be screened from all streets and nearby properties. See Section 115.120 for standards pertaining to rooftop screening.

4) The provisions in Chapter 117 related to personal wireless service facilities supercede the provisions of this Section to the extent an appurtenance falls within the definition of a personal wireless service facility.

c. Radio Tower - A radio tower and antenna structure for use by a noncommercial, licensed amateur operator shall be allowed, if the Planning Official determines that--

June 1988 (Ordinance 3105)
May 1986 (Ordinance 2952)

PUBLICATION SUMMARY
OF ORDINANCE NO. 3649

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING AND LAND USE, AND AMENDING ORDINANCE 2740, AS AMENDED, THE KIRKLAND ZONING ORDINANCE, AMENDING SECTIONS 5.10.745, 115.60, AND 162.35, AND ADDING A NEW CHAPTER 117 TO THE KIRKLAND ZONING CODE RELATING TO PERSONAL WIRELESS SERVICE FACILITIES AND OTHER WIRELESS COMMUNICATIONS FACILITIES (FILE NO. IV-97-97).

SECTION 1. Adopts a new Chapter 117 of the Kirkland Zoning code for Personal Wireless Service Facilities.

SECTION 2. Amends Chapter 5 of the Kirkland Zoning Code.

SECTION 3. Amends Chapter 115 of the Kirkland Zoning Code:

SECTION 4. Amends Chapter 162 of the Kirkland Zoning Code.

SECTION 5. Provides a review clause for the ordinance.

SECTION 6. Provides a severability clause for the ordinance.

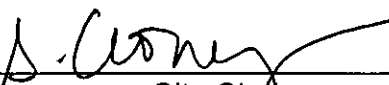
SECTION 7. Describes disapproval jurisdiction of the Houghton Community Council.

SECTION 8. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

SECTION 9. Describes certification by the City Clerk.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its regular meeting on the 11th day of August, 1998.

I certify that the foregoing is a summary of Ordinance 3649 approved by the Kirkland City Council for summary publication.



Deputy City Clerk