

ORDINANCE NO. 4045

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING TITLE 23 (THE KIRKLAND ZONING CODE) OF THE KIRKLAND MUNICIPAL CODE; ADOPTING AMENDMENTS TO CHAPTER 117 OF THE KIRKLAND ZONING CODE REGULATING THE SITING OF PERSONAL WIRELESS SERVICE FACILITIES, MODIFYING THE CHAPTER ORGANIZATION, CLARIFYING PROVISIONS, ADDING NEW SECTIONS, AND REVISING PROVISIONS RELATING TO DEFINITIONS, SCREENING REQUIREMENTS, REVIEW PROCEDURES, ALLOWABLE HEIGHT, AND OTHER COMPONENTS OF CHAPTER 117 KZC (FILE NO. IV-03-13).

WHEREAS, the City Council has received from the Kirkland Planning Director a recommendation to amend Chapter 117 of the Kirkland Zoning Code – Personal Wireless Service Facilities, Ordinance 3719 as amended (Title 23 of the Kirkland Municipal Code), and bearing Kirkland Department of Planning and Community Development File No. IV-03-13; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, this action is exempt from the concurrency management process; and

WHEREAS, prior to making said recommendation, the Planning Director and Houghton Community Council, following notice thereof as required by RCW 35A.63.070, on August 29, 2005, and January 10, 2006, jointly held public hearings on the amendment proposal and considered the comments received at the hearings; and

WHEREAS, pursuant to the State Environmental Policy Act, there has accompanied the proposal and recommendation through the entire consideration process a Determination of Nonsignificance (DNS) issued by the Responsible Official, including supporting environmental documents, issued by the responsible official on June 27, 2005, pursuant to WAC 197-11-340 and WAC 197-11-390; and

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 Director;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Chapter 117 of Ordinance 3719 as amended, the Kirkland Zoning Code (Title 23 of the Kirkland Municipal Code), is amended to read as set forth in Attachment A which by this reference is incorporated herein.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

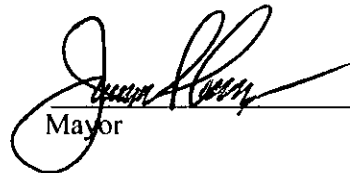
Section 3. To the extent the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance, but in no event sooner than thirty (30) days from and after its passage by the Kirkland City Council and publication, as provided in Section 4.

Section 4. Except as provided in Section 3, this ordinance shall be in full force and effect thirty 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 5. A complete copy of this ordinance 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 7th day of March, 2006.

SIGNED IN AUTHENTICATION thereof this 7th day of March, 2006.



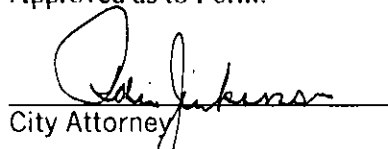
Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

ORDINANCE NO. 4045
PUBLICATION SUMMARY

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING TITLE 23 (THE KIRKLAND ZONING CODE) OF THE KIRKLAND MUNICIPAL CODE; ADOPTING AMENDMENTS TO CHAPTER 117 OF THE KIRKLAND ZONING CODE REGULATING THE SITING OF PERSONAL WIRELESS SERVICE FACILITIES, MODIFYING THE CHAPTER ORGANIZATION, CLARIFYING PROVISIONS, ADDING NEW SECTIONS, AND REVISING PROVISIONS RELATING TO DEFINITIONS, SCREENING REQUIREMENTS, REVIEW PROCEDURES, ALLOWABLE HEIGHT, AND OTHER COMPONENTS OF CHAPTER 117 KZC (FILE NO. IV-03-13).

Section 1. Identifies the specific amendments to Ordinance 3719, as amended, the Kirkland Zoning Code.

Section 2. Addresses severability.

Section 3. Establishes that this ordinance will be effective within the disapproval jurisdiction of the Houghton Community Council Municipal Corporation upon approval by 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, but no sooner than thirty days after publication as provided in Section 4.

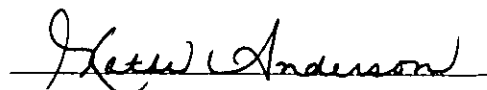
Section 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as thirty days after publication of said summary.

Section 5. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments.

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 7th day of March, 2006.

I certify that the foregoing is a summary of Ordinance 4045 approved by the Kirkland City Council for summary publication.

Attest:



City Clerk

ATTACHMENT A

Chapter 117 - PERSONAL WIRELESS SERVICE FACILITIES

Sections:

<u>117.05</u>	<u>User Guide</u>
<u>117.10</u>	<u>Policy Statement</u>
<u>117.05 15</u>	<u>Definitions</u>
<u>117.15 20</u>	<u>New and Existing Facilities Applicability</u>
<u>117.65</u>	<u>Other Wireless Communications Facilities</u>
<u>117.25</u>	<u>Exemptions</u>
<u>117.30</u>	<u>Prohibited Devices</u>
<u>117.55 35</u>	<u>Permit Requirement</u>
<u>117.25</u>	<u>Co-Location</u>
<u>117.20 40</u>	<u>Priority of Locations Application Review Process</u>
<u>117.45</u>	<u>Pre-Submittal Meeting</u>
<u>117.45 50</u>	<u>Application Requirements</u>
<u>117.55</u>	<u>Determination of Application Completeness</u>
<u>117.50 60</u>	<u>Third Party Review</u>
<u>117.30 65</u>	<u>Design PWSF Standards</u>
<u>117.70</u>	<u>Equipment Structure Standards</u>
<u>117.35 75</u>	<u>Landscaping/Buffering Screening</u>
<u>117.70 80</u>	<u>Modifications Departures From Chapter Provisions</u>
<u>117.40 85</u>	<u>Non-Use/Abandonment</u>
<u>117.90</u>	<u>Removal From City Property - When Required</u>
<u>117.75 95</u>	<u>Appeals and Judicial Review</u>
<u>117.100</u>	<u>Lapse of Approval</u>
<u>117.105</u>	<u>Complete Compliance Required</u>
<u>117.110</u>	<u>Time Limit</u>
<u>117.115</u>	<u>Compliance With Other City Codes</u>
<u>117.80 120</u>	<u>Conflict</u>
<u>117.60 125</u>	<u>Violations and City Remedies</u>
<u>117.05</u>	<u>User Guide</u>

This Chapter establishes the conditions under which Personal Wireless Service Facilities (PWSF) may locate and operate in different areas of the city. The provisions of this Chapter add to and in some cases supersede the other regulations of this code. If you wish to install, operate, or alter PWSF in Kirkland, you should read the provisions of this Chapter.

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 PWSF.~~ Pursuant to the guidelines of Section 704 of the Federal Telecommunications Act of 1996, 47 USC, Chapter 5, Subchapter III, Part I, Section 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.

1. The goals of this Chapter are to:

- (i) a. ~~e~~Encourage the location of towers in nonresidential areas and to minimize the total number of tall towers throughout the City;
- (ii) b. ~~e~~Encourage the joint use of existing tower sites;
- (iii) c. ~~e~~Encourage users of towers and antennas to locate them, to the extent possible, in areas where the impact on the City is minimal,
- (iv) d. ~~e~~Encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas;
- (v) e. ~~s~~Strongly encourage the providers of personal wireless services to use concealment technology;
- (vi) f. ~~p~~Provide standards for the siting of ~~personal wireless service facilities PWSF~~ and other wireless communications facilities (such as television and AM/FM radio towers); and
- (vii) g. ~~f~~Facilitate the ability of the providers of personal wireless services to provide such services throughout the City quickly, effectively and efficiently; and
- h. Prioritize the location of PWSF on existing structures such as ball field lights, transmission towers, utility poles or similar structures, particularly when located on public property.

2. Accordingly, the City Council finds that the promulgation of this Chapter is warranted and necessary to:

- 1 a. ~~To m~~Manage the location of towers and antennas in the City;
- 2 b. ~~To p~~Protect residential areas and other land uses from potential adverse impacts of towers and antennas;
- 3 c. ~~To m~~Minimize visual impacts of towers and antennas through careful design, siting, landscaping, screening, innovative camouflaging techniques and concealment technology;
- 4 d. ~~To a~~Accommodate the growing need for towers and antennas;
- 5 e. ~~To p~~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 f. ~~To a~~Avoid potential damage to adjacent properties through engineering and proper siting of ~~personal wireless service facilities PWSF~~.

117.05 15 Definitions

For the purpose of this Chapter, the following terms shall have the meaning ascribed to them below. Terms not defined in this Section shall be defined as set forth in Chapter 5 KZC:

- 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~~
- b. A "whip antenna" is an omni-directional antenna that is up to 15 feet in height and up to four inches in diameter; and
- b. c. 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. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater. Measurement of antenna height shall include the base pad, support structure, antenna, lightning rods, and other appurtenances.
3. "Building" shall mean a roofed structure used or intended for human occupancy.
- 3 4. "Cell site" shall mean a tract or parcel of land or building that contains the ~~personal wireless service facilities~~ PWSF including any antenna, antenna support structure, accessory buildings, and associated parking, and may include other uses associated with and ancillary to personal wireless services.
- 4 5. "Co-location" shall mean the use or placement of PWSF ~~a common personal wireless service facility or on a 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 6. "Equipment structure" shall mean a facility, shelter, cabinet or vault used to house and protect the electronic or other associated equipment necessary for processing wireless communications signals. "Associated equipment" may include, for example, air conditioning, backup power supplies, and emergency generators.
- 6 7. "Existing structure" shall mean, but is not limited to, any existing building, electrical transmission tower, flagpole, light standard, utility pole, water tank reservoir, other support structure, and structures accessory ~~structures~~ thereto.
- 7 8. "FAA" shall mean the Federal Aviation Administration.
- 8 9. "FCC" shall mean the Federal Communications Commission.
- 8 10. "Nonresidential" or "nonresidential zone" shall mean (1) all portions of the City (including rights-of-way adjacent thereto, measured to the centerline of the right-of-way) in an area not zoned residential as defined in this Chapter, or (2) the I-405 or SR 520 right-of-way.
11. "Other support structure" shall mean a structure used to support PWSF or equipment structures, excluding buildings, utility poles, and water reservoirs. Examples of "other support structure" include flagpoles and ballfield light standards.
- 40 12. "Personal wireless services" and "personal wireless service facilities" (PWSF), as used in this Chapter, shall be defined in the same manner as in Title 47, United States Code, Chapter 5, Subchapter III, Part I, Section 332(c)(7)(C), as they may be amended now or in the future.

13. "Replacement structure" shall mean a structure that replaces or is intended to replace an existing structure of a similar design and similar primary purpose, to enable the installation of new or additional PWSF on that structure. If a "replacement structure" meets the definition of "tower", it shall be regulated as a new tower.

14. "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 5A, D, E; PLA 6A, C, D, E, F, H, I, J, K; PLA 7A, B, C; PLA 9; PLA 15B; PLA 16; PLA 17; and P; and rights-of-way adjacent thereto, measured to the centerline of the right-of-way.

15. "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. A "tower" shall not include a replacement utility pole as authorized by KZC 117.65.6.

16. "Utility pole" shall mean a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

117.45 20 New and Existing Facilities Applicability

1. New Facilities Antennas and Towers – All new personal wireless service facilities, including without limitation antennas and towers, shall comply with this Chapter unless the applicant had a vested application to site a personal wireless service facility said PWSF under a prior version of this code chapter, or unless specifically exempted by KZC 117.25.

2. Existing Facilities Antennas and Towers –

a. The usage of A all personal wireless service facilities, including without limitation existing antennas and towers, shall be allowed to continue their usage as they presently it exists as of the effective date of this Chapter. Routine maintenance and reconfiguration of antennas shall be permitted on such existing antennas and towers, subject to the limitations below.

b. However, aAny reconfiguration pursuant to paragraph (a) above that increases the height or number of antennas height shall be treated like and processed as a new facility.

c. Existing antennas that conform to the provisions of this chapter may be replaced by new antennas, if such new antennas are approved as a minor modification pursuant to KZC 117.105.

d. The replacement of existing antennas that do not conform to the provisions of this chapter shall be treated and processed as a new facility.

e. The replacement of an existing tower, whether that tower conforms or does not conform to the provisions of this chapter, shall be treated and processed as a new facility.

3. Equipment Structures –

a. The usage of existing equipment structures shall be allowed to continue their usage as it exists as of the effective date of this Chapter. Routine maintenance, reconfiguration of, or additions to equipment structures shall be permitted, subject to the limitations below.

b. Existing equipment structures may be replaced, and new equipment structures may be added to an approved antenna and/or tower, provided that the new equipment structures conform with the provisions of this chapter, and are approved as a minor modification pursuant to KZC 117.105

- c. Reconfiguration or addition of equipment structures that increases the size of the equipment structure enclosure shall be treated and processed as a new facility.
- d. Reconfiguration of or additions to a non-approved antenna or tower are not permitted, unless the entire facility obtains approval as a new facility through the appropriate review process.

- 4. 117.65 Other Wireless Communication Facilities - All of the provisions of this Chapter, which address personal wireless services and personal wireless service facilities PWSF, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television, satellite radio, global positioning systems (GPS), and AM/FM radio towers) to the maximum extent allowed by law.

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.~~

117.25 Exemptions

The following are exempt from the provisions of this Chapter and shall be permitted in all zones, subject to any other applicable provisions of this Code:

1. Temporary PWSF during an emergency declared by the City.
2. Temporary PWSF located on the same site as, and during the construction of, a permanent PWSF for which appropriate permits have been granted.
3. Licensed amateur (ham) radio stations.
4. Satellite dish antennas two meters or less in diameter when located in non-residential zones, and satellite dish antennas one meter or less in diameter when located in residential zones, including direct to home satellite services, when used as an accessory use of the property.

117.30 Prohibited Devices

Except as exempted pursuant to KZC 117.25, PWSF that are not permanently affixed to a support structure and which are capable of being moved from location to location (e.g., "Cell on Wheels") are prohibited.

117.55 35 Permit Requirement Required

In all instances, a permit must be obtained from the City before any personal wireless service facilities PWSF may be constructed on any public or private land or right-of-way, including I-405, SR 520, and the Burlington Northern Railroad right-of-way, within the City limits.

117.20 40 Priority of Locations Application Review Process

- 4. After the applicant has satisfied the pre-submittal meeting requirements of KZC 117.45, an application to site a personal wireless service facility PWSF shall be subject processed

according 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: This table does not include all requirements for PWSF. Additional requirements and standards affecting design and location of PWSF can be found in Sections 117.65 (PWSF Standards), 117.70 (Equipment Structure Standards), and 117.75 (Screening).

Review Process	Facility Type ¹
<u>1. Planning Official Decision</u> <i>(Construction permit review only, Planner issues decision).</i>	a) <u>Co-location of antennas on existing towers in nonresidential zones.</u>
	b) <u>Attachment of antennas to existing buildings or mechanical equipment enclosures in a nonresidential zone. See KZC 117.65.7.</u>
	c) <u>Attachment of antennas to existing water reservoirs, utility poles, or other support structures in any zone.² See KZC 117.65.6.</u>
	d) <u>Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed 18 inches or increase the diameter of the existing pole by more than 50%, whichever is less.² See KZC 117.65.6.</u>
<u>2. Process I Permit</u> <i>(Planning Director Decision following public notice and comment, per Ch. 145 KZC)</i>	a) <u>Co-location of antennas on existing towers in residential zones, not resulting in any increase to tower height.</u>
	b) <u>New towers in nonresidential zones, not exceeding 40 feet in height.⁴</u>
	c) <u>Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will not exceed 24 inches or increase the diameter of the existing pole by more than 100%, whichever is less.² See KZC 117.65.6.</u>
	d) <u>Attachment of antennas to non-residential buildings, such as schools or churches, in residential zones.³ See KZC 117.65.7.</u>
<u>3. Process IIA Permit</u> <i>(Hearing Examiner holds public hearing and issues decision, per Ch. 150 KZC)</i>	a) <u>New towers in nonresidential zones, exceeding 40 feet in height.⁴</u>
	b) <u>Attachment of antennas to replacement utility poles in any zone, where the diameter of the replacement pole will exceed the diameter of the existing pole by more than 100% or 24 inches, whichever is less.</u>
	c) <u>Attachment of antennas to multi-family residential buildings in any zone.³</u>
<u>4. Process IIB Permit</u> <i>(Hearing Examiner holds public hearing, City Council issues decision, per Ch. 152 KZC)</i>	a) <u>Co-location of antennas on existing towers in residential zones resulting in an increase in tower height.³</u>
	b) <u>New towers in residential zones, not exceeding 40 feet in height.^{3,4}</u>
	c) <u>Departures from standards contained in this Chapter, subject to the limitations of KZC 117.80.</u>
	d) <u>Any facility that does not qualify for review as a Planning Official decision, Process I permit, or Process IIA permit as listed above.³</u>

Footnotes:

- 1 Although this table specifically addresses antennas and towers, it is presumed that for each facility there will be associated equipment structures, and there may be structural alterations to existing support structures. Such equipment structures and structural alterations shall be reviewed through the same process as the facility with which they are associated, subject to the limitations of KZC 117.20.
- 2 Attachment of antennas to existing water reservoirs or other support structures, or to existing or replacement utility poles, where such attachment results in a height increase to the original support structure, may be approved only once through the review process indicated. Any

- subsequent proposal that would result in a height increase shall be reviewed through Process IIB.
3. If in a residential zone, the applicant shall demonstrate that a diligent effort has been made to locate the proposed facility in a nonresidential zone, and that due to valid considerations including physical constraints or technological feasibility, no other location is available.
 4. An application for a new tower shall not be approved unless the applicant demonstrates, to the satisfaction of the City, that an attempt was made to co-locate the proposed antenna on an existing structure, and that such attempt was spatially, structurally, or technically infeasible.

<p>a. Administrative — Decision</p>	<ol style="list-style-type: none"> 1) Co-location of antennas on personal wireless service towers in nonresidential zones. 2) Attachment of antennas to existing structures in nonresidential zones: <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 façade of a building. 3) Equipment structures may not exceed 500 cubic feet with a 5-foot height limit in residential zones. 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>b. Process I — Permit</p>	<ol style="list-style-type: none"> 1) New personal wireless service towers and associated equipment in nonresidential zones: <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. 2) Attachment of antennas to existing structures in nonresidential zones: <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 façade of a building.
<p>c. Process IIB — Permit</p>	<ol style="list-style-type: none"> 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 KZC 117.70.

2. Further Process IIB 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 nonresidential 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 30 feet 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 30 feet within one-quarter mile of the proposed site.

117.45 Pre-Submittal Meeting

Before an application requiring review through Planning Official Decision, Process I, Process IIA, or Process IIB will be accepted for processing, the applicant shall attend a pre-submittal meeting with the Planning Official, as required by KZC 145.12, 150.12, or 152.12.

117.46 50 Application Requirements

- ~~a. 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 on a complete application submitted pursuant to this Chapter, 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.~~
- ~~b. All applications required pursuant to this Chapter 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 made using forms provided by submitted to the Planning Department and shall be accompanied by the information and support materials identified on said forms 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 PWSF 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 KZC 117.40(2), Further Process IIB Permit Requirements, and KZC 117.55, Third Party Review.~~

117.55 Determination of Application Completeness

1. Planning Official Decisions: Within 28 calendar days after the date of submittal of the application, the Planning Official shall determine whether the application is complete. If the application is not complete, the Planning Official shall identify and communicate the needed components to the applicant. Once the application is complete, the Planning Official shall process the application.
2. Process I, Process IIA, and Process IIB Permits: The determination of completeness for Process I, Process IIA, and Process IIB permit applications shall occur pursuant to the process set forth in Chapters 145, 150, and 152 KZC, respectively.

117.59 60 Third Party Review

In certain instances (including all particularly Process IIA and 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 applicant~~. 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, and 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~~ PWSF, 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.

To facilitate the expert review, an applicant for a Process IIB permit for a new tower in a residential zone, or for the co-location of antennas on existing towers in residential zones resulting in an increase in tower height, the applicant shall submit 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 30 feet within ¼ mile of the proposed site. The applicant shall demonstrate that he/she contacted the landowners or owners of structures taller than 30 feet within a ¼ mile radius of the proposed site, and was denied permission by those owners to locate the facility on their land or their structures.

Based on the results of the third party review, the City may require changes to the application ~~for the personal wireless service facilities that~~ to comply with the recommendations of the expert.

117.30 65 Design PWSF Standards

1. Context - The location and design of a cell sites in the City shall consider the its visual and physical impact of the site on the surrounding neighborhood and shall, to the extent feasible, reflect the context within which it is located.
2. Design Compatibility - Facilities PWSF shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, and design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape 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:~~ One or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the PWSF:

- a. For personal wireless service towers:

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

~~"Concealment technology" for t Towers in a more open setting means that they must shall have a backdrop (for example, but not limited to, trees, a hillside, or a structure) on at least two sides, be a color compatible color with the backdrop, be made of materials compatible materials with the backdrop, and that provide architectural or landscape screening be provided for the other two remaining 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 The greenbelt easement 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. Where antennas are completely enclosed within the tower, the need for the backdrop described in the preceding paragraph may be reduced or eliminated, depending on the tower design and context.

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

~~For a~~ Omnidirectional antennas mounted on the roof 15 feet or less above the roof, "concealment technology" means use shall be of a color compatible with the roof, structure or background.

~~For a~~ Other antennas, "concealment technology" means shall 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~~ the 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 a~~ Antennas mounted on one or more building facades: "Concealment technology" means shall: (a) use of color and materials such that the facility has to provide architectural compatibility with the building; It shall (b) be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible; and shall (c) 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 locating above ground with a solid fence and landscaping, is also considered concealment technology.~~

- ~~d. Where feasible, cable and or conduit shall be routed through the inside of any new tower, utility pole, or other support structure. Where this is not feasible, or where such routing would result in a structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the structure. The outside cable or conduit shall be the color of the tower, utility pole, or other support structure, and the City may require that the cable be placed in conduit.~~

- ~~e. Alternative measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process of that the optional measures will be at least as effective in concealing the PWSF as the measures required above.~~

- ~~f. Notwithstanding the above, the manner of concealment for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.~~

4. Setbacks - Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent 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. The following regulations apply, except for structures located in public right-of-way:

- a. New towers in any zone shall be setback a minimum of 20 feet from any property line, plus an additional one-half foot for each foot of tower height above 40 feet (e.g., if the tower is 40' in height, the setback will be 20' from any property line; if the tower is 50' in height, the setback shall be 25' from any property line).
- b. Replacement structures intended to accommodate a PWSF shall be setback a distance equal to or greater than the setback of the original structure from any property line adjacent to or across the street from a residential use or residential zone; and the lesser of ten (10) feet or the distance of the original structure from any property line adjacent to or across the street from all other uses or zones.

9-5. Tower and Antenna Height - The applicant shall demonstrate, to the satisfaction of the City, 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, as measured from the Average Building Elevation at the tower base to the highest point of the tower, antenna, or other physical feature attached to or supported by the tower. Examples of information that can be used to demonstrate that the tower and antennas are the minimum height necessary include, but are not limited to, propagation maps showing the necessity of the height to provide the required coverage, and a letter from a Radio Frequency engineer stating and explaining the necessity of the proposed height.

6. Antennas On a Utility Pole - Antennas mounted to an existing or replacement utility pole shall be subject to the following height limits:
- a. In any zone, 15' above the top of a pole not used to convey electrical service;
 - b. In a residential zone, 15' above the electrical distribution or transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service; and
 - c. In a nonresidential zone, 15' above an electrical distribution conductor or 21' above an electrical transmission conductor (as opposed to top of pole) if the pole is used to convey electrical service.

10 7. Antennas On or Above a Structure Building, Mechanical Equipment Enclosure, or Water Reservoir - Antennas and equipment structures on or above a structure shall be subject to the following criteria:

- a. Antennas, including panel or directional antennas, may be attached to the sides, parapets, mechanical penthouses, or similar elements, of buildings, subject to the limitations of this Chapter.
- a b. Antenna and equipment structure height is measured above the top of the roof, not from the parapet or from the Average Building Elevation of the building, mechanical equipment enclosure, or water reservoir.
- b c. Only a Omni-directional antennas may be roof-mounted, but may not be mounted on top of rooftop appurtenances. No panel or directional antennas may be mounted on roofs or project above the roofline, except as provided in subsection (g) below. The "roofline" of a water reservoir that incorporates a curved roof shall be the point at which the vertical wall of the water reservoir ends and the curvature of the roof begins.

- d. Whip antennas may exceed the structure height by 15 feet, and other omnidirectional antennas may exceed the structure height by 10 feet.
- e. All ~~r~~Roof-mounted antennas must be set back from the edge of the roof a distance equal to 100 percent 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 f. Roof-mounted antennas shall be consolidated and centered in the roof to the maximum extent feasible rather than scattered.
- f g. Antennas, including flush-mounted panel or directional antennas, may be attached to an existing conforming mechanical equipment enclosure or stair or elevator penthouse or similar rooftop appurtenance which projects above the roof of the building, but may not project any higher than the enclosure.
- g h. In no instance shall equipment structures, antenna and related equipment Except for PWSF installed in an existing rooftop penthouse, PWSF shall occupy no more than 25 10 percent of the total roof area of a building. Rooftop conduit shall be excluded from this calculation.
- i. Building parapets or other architectural features, including rooftop mechanical equipment enclosures, stair or elevator penthouses, or similar rooftop appurtenances, shall not be increased in size or height solely for the purpose of facilitating the attachment of PWSF components.
- h. 8. Historic or Landmark Locations - No antennas shall be permitted on property designed 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. 9. Signal Interference - 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. 10. Support Wires - No guy or other support wires shall be used in connection with antennas, antenna arrays or support structures except when required by construction codes adopted by the City, the UBC to anchor the antennas, antenna arrays or support structures.
- 5-11. Views - ~~Personal wireless service facilities PWSF~~, including towers, must be located and oriented in such a way as to minimize view blockage.
- 6-12. 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~~ - (moved to 117.70, below).
13. Noise - The installation and operation of PWSF shall comply with the noise standards set forth in KZC 115.95.
- 8-14. Federal Requirements - All towers and antennas PWSF 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 PWSF shall bring such towers and antennas PWSF into compliance with such ~~revised standards and regulations~~ changes in accordance with the compliance deadlines and requirements of such ~~standards and regulations~~ changes. 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~~ PWSF 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~~ PWSF, the owner shall have 30 days to bring such ~~tower~~ PWSF into compliance with such standards and regulations. If the owner fails to bring such ~~tower~~ PWSF into compliance within said 30 days, the City may remove such ~~tower~~ PWSF at the owner's expense.

7 117.70 Equipment Structures Standards - ~~The standards for equipment structures are as follows:~~

1. Maximum Size in Residential Zones - ~~e~~Equipment structures may ~~shall~~ not exceed 500 cubic feet 5 feet in height, with a 5-foot height limit in residential zones. Equipment structure enclosures shall not exceed 125 square feet each. These limitations shall apply to each individual equipment structure and enclosure, provided that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to these limitations.
2. Maximum Size in Nonresidential Zones - Gross floor area of equipment structures shall be the minimum necessary but not greater than 240 square feet per provider. Maximum height is 10 feet above average building elevation. These limitations shall not apply to equipment structures that are fully contained within a building that houses or is accessory to a principal permitted use and that satisfies the dimensional regulations of the underlying zone.
3. Equipment Structures Located in Right-of-Way - If ground-mounted, equipment structures shall not exceed a height of 30 inches. If mounted on poles, said structures shall comply with 117.70.6. Setback requirements do not apply to equipment structures located in the right-of-way.
4. Setbacks When Located on Private Property - ~~Ground-mounted personal wireless service facilities shall be located at least a distance equal to 100 percent 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.~~ equipment structures over 30 inches in height shall be setback at least 10 feet from all property lines; provided, that equipment structures that are fully contained within a legally established building that houses or is accessory to a principal permitted use shall not be subject to this requirement.
5. Equipment structures on or above a structure - Equipment structures on or above a structure shall be subject to the following criteria:
 - a. ~~Antenna and e~~Equipment structure height is measured above the top of the roof, not the parapet.
 - b. When mounted to the roof of a building with a pitched or stepped roof form, Rroof-mounted antennas and equipment structures shall be incorporated into the pitched or stepped roof form, and not appear as a separate penthouse or box.
6. Equipment structures mounted on poles or towers -

- a. Equipment structures may be mounted on utility poles or towers. The location and vertical clearance of such structures shall be reviewed by the Public Works Department and verified by the underlying utility owner to ensure that the structures will not pose a hazard to other users of the right-of-way.
 - b. Equipment structures mounted on utility poles or towers shall be located in a manner that minimizes clutter and visual impact.
- a7. Compatibility - 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.
8. Concealment - For equipment structures: "Concealment technology" means One or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment structure:
- a. Locating within a building or building appendage constructed in accordance with all applicable City codes, or if
 - b. Locating on top of a building, with architecturally compatible screening.
 - c. Locating An underground location, or
 - d. Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.75.3, is also considered concealment technology. or
 - e. If mounted on a utility pole or tower, the equipment structure shall be of a similar color to that of the pole or tower to which it is attached, unless alternative measures are approved by the City as part of the applicable review process.
- e9. Noise Standards - Equipment structures shall be oriented so that exhaust ports or outlets are pointed away from properties which that may be impacted by noise. The installation and operation of Equipment structures shall comply with noise regulations in KZC 115.95. 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.

117.35 75 Landscaping/Buffering Screening

1. General - Landscaping, ~~as described herein,~~ shall be required to screen as much of the ~~new personal wireless service tower PWSF and any ground-mounted features, including fencing,~~ 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 allow or require any other form of the use of concealment technology, as described in KZC 117.65.3, either instead of or in addition to required landscaping, if it to achieves the same degree of effective screening as the required landscaping. The effectiveness of visual mitigation techniques must will 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 a 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 –

- a. Except for PWSF located in a public right-of-way and subject to review as a Planning Official decision, Buffering of ground-mounted personal-wireless service-facilities PWSF shall be required around the perimeter of the facility as follows: Landscape buffering shall at a minimum comply with the requirements of KZC 95.25(3) except that all trees must be evergreen
- i. Provide a five-foot-wide landscaped strip with one row of trees planted no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of two inch caliper, minimum, and/or coniferous trees at least six feet in height, minimum. At least 50 percent of the required trees shall be evergreen.
 - ii. Living ground covers planted from either four-inch pots with twelve-inch spacing or one-gallon pots with eighteen-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the trees.
- b. As an option to the buffering measures described in (a) above, the City may approve or require one or more of the measures provided for below, if the City determines that such measures will provide effective screening. Such optional measures include, but are not limited to, the following:
- i. Walls or solid fencing, of a height at least as high as the equipment it screens, subject to KZC 117.75.4 below.
 - ii. Architectural features, such as parapets, mechanical penthouses, or building fin walls.
 - iii. Climbing vegetation supported by a structure such as a fence or trellis, of a type and size that will provide a dense visual barrier at least as high as the equipment it screens within two years from the time of planting.
 - iv. Screening by the natural topography of the site or the adjoining property or right-of-way.

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. Fencing installed specifically for the purpose of screening ground-mounted PWSF shall not be taller than necessary to provide appropriate screening.
5. Maintenance – The applicant shall maintain the screening in good condition and shall replace any plants required by this chapter or approved or required as part of the permit approval that are unhealthy or dead. In the event that landscaping screening is not maintained at the required level, the City, after giving 30 days' advance written notice to the provider, may maintain or establish the landscaping screening and bill both the landowner and provider for such costs until such costs are paid in full.
6. Nonwithstanding the above, the manner of screening for any PWSF that requires approval through Process IIA or Process IIB shall be reviewed and determined as part of that Process.

117.70 80 Modifications Departures From Chapter Provisions

Provisions of this Chapter shall not be subject to variances described in Chapter 120 KZC. However, through Process IIB, Chapter 152 KZC, the City may consider modification of standards in the departures from Chapter provisions except for the following:

1. The 40-foot height limit for personal wireless service facilities towers in residential zones; and/or
2. The 15-foot limit for antennas projecting above an existing or replacement utility pole or electrical distribution or transmission conductor in residential zones.
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.~~

117.40 85 Non-Use/Abandonment

1. Bond - The City may require a bond or other suitable performance security as per pursuant to Chapter 175 KZC 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 2. In the event the use of any tower or antenna PWSF will be discontinued for a period of 60 consecutive days, the owner or operator shall so notify the City in writing, and the tower or antenna PWSF 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 PWSF owner or operator regarding the issue of tower or antenna PWSF usage. Upon such abandonment, the owner or operator of the tower or antenna PWSF or the owner of the property upon which such facility is located shall have an additional 60 days within which to:
 - a. Reactivate the use of the tower or antenna PWSF or transfer the tower or antenna PWSF to another owner or operator who makes actual use of the PWSF tower or antenna; or
 - b. Dismantle and remove the tower or antenna PWSF. If such tower or antenna PWSF is not removed within said 60 days from the date of abandonment, the City may remove such tower or antenna PWSF 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 60 days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval of the tower or antenna PWSF shall automatically expire.

117.90 Removal From City Property - When Required

A PWSF mounted to any City-owned property, utility pole, or other structure shall be removed if the City deems removal is necessary for the undergrounding of utilities, the sale, development, or redevelopment of City-owned property, or the demolition or alteration of a City-owned building or other structure. The PWSF shall be removed at no expense to the City.

117.75 95 Appeals and Judicial Review

~~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).

1. An applicant may appeal a Planning Official decision to the Hearing Examiner. A written notice of appeal shall be filed with the Planning Department within fourteen (14) days of the date the Planning Official's decision was mailed or otherwise delivered to the applicant. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least seventeen (17) days prior to the hearing. The applicant shall have the burden of proving that the Planning Official made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse, or modify the decision being appealed.
2. Appeals of Process I, IIA, or IIB permits are processed, and judicial review shall occur, according to the appeal and judicial review procedures and provisions for either Process I, IIA, or IIB respectively.

117.100 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity or other actions approved under this Chapter within one year after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 117.95, the running of the one year is tolled for any period of time during which a court order in said judicial review proceeding prohibits the development activity or other actions. The applicant must substantially complete construction for the development or other actions approved under this Chapter and complete the applicable conditions listed on the notice of decision within two years after the final approval on the matter, or the decision becomes void. For development activity or other actions with phased construction, lapse of approval may be extended when approved under this Chapter and made a condition of the notice of decision.

117.105 Complete Compliance Required

1. General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this Chapter in order to do everything authorized by that approval.
2. Exception – Subsequent or Minor Modification – The Planning Official may approve a modification to the permit approved for the PWSF if:
 - a. The modification is minor and will not substantially change the proposed facility; and
 - b. The proposed modification will comply with the provisions of this Chapter in effect at the time of the modification request; and
 - c. There will not be any substantial changes in the impacts on the neighborhood or the City as a result of the change.

Any modification, other than as specified in paragraph 2 of this Section, must be reviewed and decided upon as a new PWSF approval under this Chapter.

117.110 Time Limit

Any time limit, pursuant to Chapter 36.70B RCW, upon the City's processing and decision upon applications under this Chapter may, except as specifically otherwise stated in this Chapter, be modified by a written agreement between the applicant and Planning Director. In

the event a permit constitutes or presents a special circumstance under the provisions of this Chapter, the time limits for the City to make a final decision and issue its notice of decision under Chapter 36.70B RCW are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

117.115 Compliance With Other City Codes

Compliance with the provisions of this Chapter does not constitute compliance, or remove from the applicant the obligation to comply, with other applicable provisions of this Code, the Comprehensive Plan, or any other ordinance or regulation of the City including, but not limited to, regulations governing construction or implementing the State Environmental Policy Act or the Shoreline Management Act.

117.80 120 Conflict

Notwithstanding the requirements of Section 117.115 above, 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~~ PWSF are permitted in the City pursuant to this Chapter notwithstanding the fact they are not mentioned in the use zone charts in Chapters 15 through 65 KZC.

117.60 125 Violations and City Remedies

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Chapter 170 KZC, Code Enforcement. 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.