City of Seattle
Department of Design,
Construction and Land Use

DIRECTOR'S REPORT AND RECOMMENDATION

Proposed Land Use Code Amendments To Regulations Dealing with Telecommunication Utilities

May 13, 2002

INTRODUCTION AND BACKGROUND

The Department of Design, Construction and Land Use is proposing legislation to amend the Land Use Code to modify regulations governing telecommunication facilities and devices. There are two types of communication utilities, Major and Minor. Major communication utilities are TV and radio towers such as those located on Queen Anne and Capitol Hills. Minor communication utilities provide several types of service but the most common are wireless facilities serving cellular telephone users. The majority of this proposed legislation addresses Minor Communication Utilities.

The proposed Land Use Code amendments address location and placement of devices, review processes based on type of devices and corresponding zones, height limits, mitigation of visual impacts, and regulations due to proximity to landmarks and/or historical structures. The legislation consists of two ordinances, one to amend the Shoreline portion of the Land Use Code, and one to amend other portions of the Land Use Code as well as the SEPA Environmental Health policy in Title 25 of the Municipal Code.

Earlier versions of these ordinances were submitted to the City Council and a public hearing was held in February 2000. After the February 2000 public hearing, and in response to issues raised at the hearing, the City Council directed DCLU to make changes to the proposal, mainly with respect to improving the way visual impacts are addressed and the criteria that deal with establishing the "need" to locate in specific zones. A new draft was prepared in November 2000 and submitted for public comment. Upon further consideration of public comment and industry input, a final recommendation has now been prepared for the Council's consideration.

Goals and Objectives of the Proposed Legislation

The original purpose of these proposed amendments was to bring the Municipal Code into compliance with federal and state laws (Federal Telecommunications Act, Federal Communications Commission Rules, Washington State legislation - RCW 43.21C.0384). These laws, adopted in 1996 and 1997, removed or diminished local jurisdictions' authority over various types of telecommunication facilities. The Federal Telecommunications Act of 1996 was approved to spur competition in all communication services. The Washington State legislature subsequently adopted a bill that exempts certain personal wireless services facilities from local regulatory review. Later, the Federal Communication Commission (FCC) adopted rules that preempt local zoning regulations of certain small satellite earth station antennas and certain direct-to-home video services. As a result of these laws, especially with regard to encouraging competition among providers of cellular telephones and other personal communication services, Seattle (along with much of the rest of the country) experienced a significant number of new antennas being installed on rooftops, on buildings, and a few on monopoles.

In addition to the changes mandated by federal and state law, most of the recommended changes are based on concerns that have been raised by applicants, community members, and staff, concerning ways that the code could be improved in terms of greater consistency and clarity, and in effectiveness in dealing with the impacts of telecommunication facilities, especially visual impacts. The proposed amendments would change development standards concerning major institutions, general screening requirements, landmarks and special review districts, rooftop coverage, among others, to meet local objectives and to respond to evolving technology involved with provision of wireless and other services.

The proposed amendments are also designed to meet the objectives of Seattle's existing telecommunication regulations and Seattle Comprehensive Plan goals on telecommunications. Seattle Comprehensive Plan goal L357 states: "recognize the public benefit provided but only allow these utilities in locations where impacts can be mitigated…." Also, Goal L362 states that "Minor communication utilities shall be developed in such a manner as to minimize impacts on nearby areas. Consideration shall be given to the following criteria: visual impacts, proximity to schools, neighborhood compatibility, land use and other impacts."

The overall approach of the proposed amendments to the Land Use Code, as well as the original legislation that adopted the existing telecommunication regulations, is to ensure that these impacts are avoided or minimized. And the standards and approval criteria are based on the underlying zone. The regulations are much more restrictive with respect to the type of approval required (Council Conditional Use, Administrative Conditional Use, or permitted outright), and development standards applied (such as screening requirements), in residential (especially Single Family) zones, less restrictive in commercial zones, and even less so in downtown and industrial zones.

EVALUATION OF ALTERNATIVES AND RECOMMENDATIONS

Following is a discussion of some of the major aspects of the proposal, the issues involved, the alternatives considered, and the recommendations contained in the proposed legislation. A more complete list of the proposed changes is contained in Attachment A.

Visual Impacts of Minor Communication Utilities

A main focus of these proposed changes is to improve the way the City addresses the visual impacts of telecommunication facilities. These proposed amendments promote the incorporation of new minor communication utilities into the architecture of existing buildings; the standards could be varied through a design review process. This is the approach of many jurisdictions; other jurisdictions' standards are often more stringent than Seattle's current ones. In addition, the current code requires measures, such as screening, to mitigate visual impacts only in cases where telecommunication facilities are to be located adjacent to or across a street from a public park or residentially zoned lot. The proposed regulations would require that visual impacts be addressed in and throughout all zones. The somewhat "discretionary" nature of the new visual impact standards may present challenges in implementation; however, this is an appropriate approach since it is preferable to overly specific standards (such as the current "Two-thirds of the height of the antenna shall be screened"); flexibility is often required to effectively address specific locational circumstances.

Type of Approval Required for Minor Communication Utilities

A summary chart of the types of approval required, by zone, both by the existing Land Use Code and under the proposed changes is contained in Attachment B.

Single Family Zones Since the number of cell sites is expanding rapidly, and the need for serving residential areas is growing, there have been a number of recent proposals for wireless facilities to locate on non-residential structures, such as churches, in single family zones. It is likely that these proposals will continue to increase. Council Conditional Use (CCU) approval in these cases is not practical or advisable especially given the number of likely new proposals, the advent of new visual impact standards, and the tougher criteria for approving freestanding transmission towers. Therefore, the proposed amendments would limit instances where a CCU is required -- only an Administrative Conditional Use (ACU) approval would be required when a utility is to be located on a nonresidential structure such as a church or non-conforming commercial building. The proposal is based on the belief that only very large and intrusive projects should require Council approval. (Note: a CCU would still be required to locate a minor communication utility on vacant land or on an existing single family structure; and a more restrictive criterion must be met: the applicant must prove that the utility is needed in that specific location to fill a "significant gap" in service.)

The proposed amendments would permit outright new minor communication utilities locating on existing towers. According to the current regulations an ACU approval for

such co-location is required in the following circumstances: always in residential zones and when the new facility would be located above the height limit in commercial zones. The proposed change would promote co-location, which has always been a goal of the telecommunication regulations; this change would reduce the need for new freestanding towers or location of new utilities on existing buildings. In addition, the proposal contains visual impact standards for locating facilities on existing towers. Therefore, the proposal would deal with the main concerns that are typically raised with ACU approvals: visual impacts and commercial intrusion into residential zones.

It is also proposed that mechanical equipment associated with off-site antennas (in the right-of-way or on another lot) be allowed outright as long as the equipment is enclosed within a structure, no radiofrequency radiation is emitted (e.g., is not an antenna), and all the development standards of the zone are met. Conditional use approval is not justified given that all development standards of the underlying zone would be met even if a new structure were built to accommodate the equipment. "Commercial intrusion" (an existing conditional use criterion) is not an issue because the equipment would not be visible and no dwelling units could be eliminated in residential zones.

Industrial Zones The proposal would continue to permit all facilities outright in these zones. An issue has been raised as to whether freestanding towers should require Administrative Conditional Use approval in some industrially zoned areas (such as surrounding Lake Union and the Ship Canal, along Elliott Bay west of Queen Anne Hill, and along Harbor Avenue in West Seattle) as is proposed for all new towers in commercial zones. It has been argued that by allowing freestanding transmission towers outright in industrial zones, there could be a whole series of towers located where there are narrow bands of industrial zoning near residential areas. However, the approach historically has been to encourage communication utilities to locate in industrial areas, and we continue to believe this is the appropriate.

Criteria for Approval of Minor Communication Utilities

Existing Land Use Code criteria have historically been insufficient in addressing concerns related to the siting of minor communication utilities, especially the criterion that required applicants to show a "need" to locate in residential zones. Also, similar concerns have been treated differently in different zones. The proposed amendments would simplify the review criteria and provide consistency between zones. For example, the criteria for a new transmission tower would be the same in all residential and commercial zones. A listing of the proposed new criteria, by zone, is presented in Appendix C.

For any facility in residential zones: In general, for the basic type of approval in residential zones, rather than demonstrating a "need" to be located in the residential zones, the focus would be on addressing the impacts of the new facilities, especially visual impacts, of locating in the zone. A criterion has also been added that states that the facility and location shall be the least intrusive facility at the least intrusive location. In

addition, if height limits are to be exceeded, and especially if a new freestanding tower is proposed, additional tougher criteria would need to be met.

A proposal to establish a quantifiable standard (relating to the quality of reception or relating to the percentage of calls that cannot be handled by the existing cell phone network) for approval was considered, rather than the more subjective existing criterion that requires the applicant to show the "need" to be located in a residential zone or to exceed the height limit. However, a quantifiable standard would be somewhat arbitrary and, with the proliferation of these facilities, such a standard could be difficult to implement. As noted, the criteria that is proposed for facility approval in residential zones is based on the impacts that may be anticipated from the new facility and are designed to ensure that these impacts are minimized. And, as also noted, when the height limit would be exceeded, or if the proposal is for a new freestanding tower, then additional criteria would need to be met (see below). We determined that these standards address the most important issues.

To exceed height limit in single family, multifamily, or commercial zones: The proposed amendments would require that the applicant show that the requested height is the minimum necessary for the effective functioning of the minor communication utility. An earlier version of the proposed amendments also contained a criterion that would require the applicant to show that an alternative of several smaller facilities on other sites is not "technically feasible" if they want to exceed the height limit. The "technically feasible" criterion may be difficult to meet. The industry believes that what is technically feasible may be prohibitively expensive. We are getting many applications for antennas to be located on the rooftops of existing structures, sometimes exceeding the height limit by only a few feet. Requiring this difficult criterion to be met for all these cases might be problematic. Also, requiring several alternative sites, with their accompanying impacts, may not be justified as an alternative to a rooftop antenna that would barely exceed the height limit. The overall impacts of these several alternative sites would outweigh the impacts of the one rooftop antenna that exceeded the height limit. Therefore, the final proposal does not contain this criterion. However, this criterion is appropriate with respect to the establishment of new freestanding towers (see below).

For freestanding towers: As noted, the proposal promotes a greater number of smaller sites as an alternative to new freestanding towers. An issue is whether this is, in fact, better than one large tower. Some might argue that more sites would create greater visual impacts, and one citizen has called for fewer, larger towers that look like pine trees. However, we believe, on balance, that several small sites would be less obtrusive than a large freestanding tower. Also, even though the "technically feasible" criterion may be difficult to meet, it is justified since the intent is to strongly discourage the construction of new freestanding towers.

Nonconforming Facilities

A citizen has raised the question as to whether existing minor communication utilities that become nonconforming as to the new visual impact provisions should be required to

be brought into conformity with the new code when new facilities are added, or over a certain specified period. We have chosen to propose such a requirement only when a third minor communication utility would locate on the same site in a Single Family zone in order to prevent the appearance of "antenna farms" in these sensitive residential areas. Otherwise, we believe that such retrofitting is not needed, given the fact that the new visual impact requirements will greatly increase the number of new utilities that have to meet new, tougher design standards. It is proposed that this issue be taken up at a later date after monitoring the results of the new regulations with respect to visual impacts.

CONCLUSION

A list of the major proposed changes to the existing code are contained in Attachment A that follows. In some instances it will be easier for minor communication utilities to locate in certain areas, such as on existing towers or on minor institutions in single family zones. But in other cases it will be more difficult to locate certain minor communication utilities, such as freestanding towers. Also, much more effective visual impact standards are proposed. The changes will also bring the City into conformity with federal and state regulations dealing with telecommunication facilities. In general, these amendments will improve how the City regulates these uses.

Attachment A
List of Major Proposed Changes to Existing Code

Following are the main proposed changes to the Land Use Code:

General Provisions

- Require removal of unused telecommunication equipment (poles, antennas, etc.).
- Allow co-location of minor communication utilities on existing major communication utilities to reduce the potential for more monopoles. In addition, new minor communication utilities would also be permitted outright on existing minor communication utility freestanding towers.
- Permit outright in all zones, except in single family structures in Single Family zones, minor communication utilities that are contained wholly within a structure as long as it does not result in loss of a dwelling unit in residential zones.
- Permit outright in all zones mechanical equipment associated with minor communication antennas located on another site or in the right-of-way, as long as the equipment is enclosed within a structure that conforms to the development standards of the zone.

Development Standards

- Eliminate the 10 foot from property line setback requirement in Single Family and Commercial zones. The current code has resulted in the need for taller facilities when they are required to locate back from the edge of the building. The proposed visual impact standards (see below) encourage incorporation into the architecture of the building. This is often more feasible if the facility can be incorporated into the parapet at the building's edge.
- Incorporate rooftop open space provisions (which are already in Lowrise zones) into Midrise, Highrise and Downtown zones; these provisions require specified separation between transmitting antennas and required open space located on rooftops.
- Limit minor communication utilities/accessory devices in Commercial zones to 15 feet above the height of the building or 15 feet above the height limit, whichever is less; the current code permits facilities to go 15 feet above the height limit; the proposed regulations are designed to prevent "monopoles" on top of short buildings.
- Also limit minor communication utilities/accessory devices Downtown to 15 feet above the height of the building or 15 feet above the height limit, whichever is less. However, such facilities and accompanying screening could be permitted through design review as long as the height of the utility does not exceed ten percent of the maximum height of the zone.

Visual Impacts

- A new code section is devoted entirely to addressing and mitigating visual impacts and establishing design standards for telecommunication devices and infrastructure as noted in the body of this report. See proposed Section 23.57.016.

- When a third minor communication utility would locate on the same site in a Single Family zone, all existing utilities must also be screened or otherwise brought into conformity with this new code section.

Type of Approval Required and Approval Criteria for Minor Communication Utilities, By Zone

A summary of the proposed changes for types of approval required, by zone, are contained in Attachment B. Attachment C lists the criteria that would apply for conditional use approval in single family, multifamily, and commercial zones.

Single Family Zones Facilities to be located on single family houses or vacant lots would continue to require a Council Conditional Use (CCU) approval. The proposed regulations require that such a use would only be permitted if it can be demonstrated that the location on the specific site is required to fill a "significant gap" in wireless services; see proposed Section 23.57.009A. Facilities to be located on all other locations (institutions, non-conforming commercial, etc.) would only need Administrative Conditional Use (ACU) approval. The current code requires CCU approval for all locations except on an existing utility or public facility, in which case an ACU is required.

Lowrise, Midrise and Highrise Zones Proposed revised criteria for ACU approval in these zones is included in Attachment C.

Commercial Zones It is proposed than an ACU be required anywhere in Neighborhood Commercial (NC), Commercial (C), and Seattle Cascade Mixed (SCM) zones for minor communication utilities that would exceed the height limit of the zone and for new free standing transmission towers. The existing code only requires an ACU if the facility would exceed the height limit in two instances: a) anywhere in NC zones, and b) on lots adjacent to single family zones in C zones.

Pike Market Mixed, Pioneer Square Mixed, and International District zones Continue to prohibit major communication utilities, while permitting minor communication utilities; up to 4 feet additional height above the roof is permitted outright, while greater height would require an ACU approval. Current requirements for a Department of Neighborhoods Certificate of Approval are unchanged.

Major Institutions Allow an ACU for major institutions with underlying residential zoning even if telecommunication facilities are larger than that permitted in the residential zone; the antenna must be at least 100 feet inside the Major Institution Overlay boundary and be substantially screened from the surrounding neighborhood's view. An ACU would not be required if a Major Institution Master Plan has been adopted that addresses telecommunication facilities.

Definitions and Exemptions

- Expanded or modified definitions, development standards and review criteria are included for Personal Wireless Facilities, Fixed Wireless Service, Amateur Radio Towers, Dish Antennas, Minor Communication Utilities, Accessory Communication Devices, Freestanding Transmission Towers, Utility Service Use, and all other telecommunication devices and infrastructure regulated under the SMC. In general, federal definitions are used where appropriate.
- Exemptions from the regulations reflect federal preemptions on the type and size of antennas or services that local governments are permitted to regulate.

Other

- Amend the SEPA "Environmental Health" policy to incorporate the FCC preemption over radiofrequency emissions for personal wireless facilities.

Shorelines

- Regulations would distinguish between major and minor communication utilities and accessory communication devices throughout the shoreline ordinance.
- Major communication utilities would continue to be prohibited in the shoreline.
- Minor communication utilities and accessory communication devices (except free standing transmission towers) would be permitted only in shoreline environments where non-water dependent commercial uses are already permitted (Urban Stable, Urban Harborfront, Urban Maritime, Urban General, Urban Industrial).
- Urban Harborfront provisions are modified to reflect height limits downtown. (Minor communication utilities/accessory devices limited to 15 feet above the height of the building or 15 feet above the height limit, whichever is less.)

Attachment B:
Summary of Changes From Existing Code Regarding Type of Approval and Criteria for Approval of Minor Communication Utilities, By Zone

Zone(s)	Existing Code	Proposed Changes
RSL, SF	• Council Conditional Use (CCU) except if on existing utility or public facility. • Administrative Conditional Use (ACU) required for locating on existing public facility or utility.	• Permitted outright if locating on existing tower; must meet visual impact standards. • Only ACU required if on non-residential structure. • Approval criteria rewritten and additional criteria if proposal exceeds height limit or is a new free standing tower.
Multifamily	ACU in all cases	• Permitted outright if locating on existing tower; must meet visual impact standards. • Approval criteria rewritten and additional criteria if proposal exceeds height limit or is a new free standing tower.
Commercial	• In Neighborhood Commercial (NC) zones ACU required only if height would be exceeded • In Commercial (C) zones ACU is required only if height limit would be exceed on lots next to a single family zone	• Permitted outright if locating on existing tower; must meet visual impact standards. • ACU required throughout zone if would exceed height limit, or existing building height, by more than 15', whichever is less. • Approval criteria rewritten and additional criteria if proposal exceeds height limit or is a new free standing tower.
Downtown	Allowed outright	Add restriction as to height: cannot exceed height limit, or existing building height, by more than 15', whichever is less. Additional height may be obtained through the design review process.
Industrial	Allowed outright	No change

Attachment C
Proposed Minor Communication Utilities Conditional Use Criteria

Single Family Zone -- on lot with single family house or vacant lot – Requires Council Conditional Use (CCU)	
Basic criteria	• Prohibited except if a personal wireless facility meets the criteria contained in section 23.57.009A (is needed to fill "significant gap" in wireless service) • In addition, if located on a lot developed with a single family dwelling, the proposed minor communication utility must be clearly incidental to the use of the property as a dwelling
Additional criteria if proposal would exceed height limit	• The requested height is the minimum necessary for the effective functioning of the minor communication utility
Additional criteria if proposal is a transmission tower	• That it is not technically feasible for the utility to be employed at an alternative location on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a utility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered

Single Family Zone - On same lot but not accessory to institutions, public facilities, major institutions, or existing non-conforming commercial use-- Requires Administrative Conditional Use (ACU)	
Basic criteria	• The minor utility shall not be significantly detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units • The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable • Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when: a.) the antenna is at least one hundred feet (100') from a MIO boundary, and b.) the antenna is substantially screened from the surrounding neighborhood's view
Additional criteria if proposal would exceed height limit	• The requested height is the minimum necessary for the effective functioning of the minor communication utility
Additional criteria if proposal is a transmission tower	• That it is not technically feasible for the utility to be employed at an alternative location on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a utility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered

Lowrise, Midrise, Highrise Zone – all projects require ACU	
Basic criteria	• The project shall not be substantially detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units • The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable • Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when: a.) the antenna is at least one hundred feet (100') from a MIO boundary, and b.) the antenna is substantially screened from the surrounding neighborhood's view
Additional criteria if proposal would exceed height limit	• The requested height is the minimum necessary for the effective functioning of the minor communication utility
Additional criteria if proposal is a transmission tower	• That it is not technically feasible for the utility to be employed at an alternative location on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a utility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered

Commercial (NC and C) Zones – project requires an ACU only if it is a transmission tower or would exceed the height limit; other facilities are permitted outright	
Basic criteria	• The proposal shall not result in a significant change in the pedestrian or retail character of the commercial area
Additional criteria if proposal would exceed height limit	• The requested height is the minimum necessary for the effective functioning of the minor communication utility
Additional criteria if proposal is a transmission tower	• That it is not technically feasible for the utility to be employed at an alternative location on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a utility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.