



Planning Commission  
Meeting:

First Wednesday of  
every Month @ 7:00pm

Planning & Community  
Development  
Department

1812 Main Street  
Lake Stevens, WA  
98258 (425) 377-3235

[www.lakestevenswa.gov](http://www.lakestevenswa.gov)

Municipal Code

Available online:

[www.codepublishing.com/WA/LakeStevens/](http://www.codepublishing.com/WA/LakeStevens/)

## **PLANNING COMMISSION AGENDA**

**Regular Meeting Date: 10/03/2018**

**CALL TO ORDER: 7:00pm**

Pledge of Allegiance

**ROLL CALL**

**GUEST BUSINESS**

**ACTION ITEMS**

1. Approval of minutes for September 19, 2018

**DISCUSSION ITEMS**

1. Briefing: Fences and Retaining Walls
2. Briefing: Wireless Communication Facilities

Comm. Dev. Director Wright  
Planning Manager Machen

**COMMISSIONER REPORTS**

**PLANNING DIRECTOR'S REPORT**

**ADJOURN**

### ***SPECIAL NEEDS***

*The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact City of Lake Stevens ADA Coordinator, at (425) 377-3227 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service.*

**PLANNING COMMISSION REGULAR MEETING MINUTES**

Community Center  
1808 Main Street, Lake Stevens  
Wednesday September 19, 2018

**CALL TO ORDER:** 7:00 pm by Chair Janice Huxford

**MEMBERS PRESENT:** Chair Janice Huxford, Tracey Trout, Linda Hoult, Steve Ewing, John Cronin

**MEMBERS ABSENT:** Commissioner Davis and Commissioner Oslund

**STAFF PRESENT:** Community Development Director Wright, Associate Planner Roth and Clerk Jennie Fenrich

**OTHERS PRESENT:** Councilmembers Rauchel McDaniel

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**Excused Absence:** Commissioner Davis made a motion, Commissioner Ewing seconded to excuse both Commissioner Davis and Commissioner Oslund. Motion passed 5-0-0-2.

**Guest business:** none

**Action Items:** 1. Motion made by Commissioner Davis and Seconded by Commissioner Ewing to a approve August 15, 2018 as corrected. Motion passed 5-0-0-2.

**Discussion items:** Community Development Director Wright gave a briefing on Design Review Board status. The City Council directed the Design Review board be disbanded. The design guidelines, have been established and will be followed while doing review by staff. Chair Huxford asked that the process be clear to applicant of what triggers design review, and language be tightened up to make could and shall be clarified. Commissioner Trout worries that the expertise of the board will be missed. Director Wright replied that trees and plants will be included in the review guidelines. Chair Huxford wants process and clear and concise for the businesses we are trying to attract. Commissioner Ewing wants to know if staff time allotment has been included in this change and how long the commission has been short staffed and how long the Council has been considering this change. Director Wright does not believe there will be a huge budget impact on Planners as they are already doing the staff recommendations. The DRB would discuss staff recommendations and occasionally make slight change recommendation to staff. The Council brought up the idea of disbanding in January. The board has not been full for almost two years. Chair Huxford asked that clarification for exemptions be considered, so there is not a perception of some projects would not have to go through Design Review. Commissioner Davis asked what triggers Design Review. Director Wright said all new commercial projects trigger Design Review. A improvement to an existing building or landscape would not trigger a formal review by a board under the current system.

Associate Planner Roth introduced a new code amendment for Chapter 14.56 Street and Sidewalk. This will be a combined effort with Public Works and Fire. Public Works has specific standards called EDDS-Engineering Design and Development Standards. Our code has some inconsistencies that have been identified in frontage improvements, road widths, parking requirements. This code amendment would ensure consistencies with width and parking regulations. Commissioner Trout asked what standards other cities have and what works in other well-functioning cities. Director

Wright said we are especially working on standards for High Urban Density parking. Narrower roads may require a trade-off for more off sight parking.

**Commissioner Reports:** Chair Huxford discussed the public hearing for Rhodora Heights at the next Council meeting as an opportunity to voice opinion to the City Council before the Boundary Review Board through Snohomish County. Commissioner Davis asked if there is an update on Costco. Director Wright replied that they are negotiating with WSDOT. Commissioner Ewing inquired if sidewalks are ADA compliant throughout the City. Director Wright replied they were built to code at the time and new sidewalks are fully compliant. Commissioner Trout reported the boat launch renovation. She also asked for the current meetings and notices to be on the front page of our website.

**Director Report:** Community Development Director Wright spoke about potential Zoning Code updates. The Council has asked that a citizen committee be formed as part of the process, Update given for 2018 work program. Shoreline Mater Program updates. Potential 2019 topics would include update Permissible Use Table, Chapter 14.40, Comprehensive Plan docket including Annexations and a new Parks Chapter.

Planning Commission decided October 3<sup>rd</sup> and 17<sup>th</sup> and November and December one meeting.

**Adjourn:** Motion by Commissioner Trout to adjourn Commissioner Ewing 2<sup>nd</sup>. Motion carried 5-0-0-2. Meeting adjourned at 8:00 p.m.

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Janice Huxford, Chair

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Jennie Fenrich, Clerk, Planning & Community Development



Staff Report  
City of Lake Stevens Planning Commission

Planning Commission Briefing  
Date: **October 3, 2018**

**SUBJECT:** Code Amendment to Fences and Retaining Walls (LUA2018-0109)

**CONTACT PERSON/DEPARTMENT:** Melissa Place, *Senior Planner*

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**SUMMARY:** Code amendment to revise Chapters 14.08, 14.48.050, 14.44.420, 14.80, and 14.88.285 LSMC, revising regulations to fences and retaining walls city-wide.

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**ACTION REQUESTED OF PLANNING COMMISSION:** This is an informational briefing and no action is requested at this time.

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***Purpose of Code Amendment***

The purpose of this briefing is to discuss a draft scope of work and receive feedback on the proposed amendments to the city's regulations. This is a city-initiated code amendment to update existing regulations regarding fences and retaining walls city-wide. This amendment is anticipated to affect Chapters 14.08, 14.48.050, 14.44.420, 14.80, and 14.88.285 LSMC and may affect other chapters not yet identified. These chapters address definitions, exceptions to building setback requirements, when a building permit is required for a fence, building and construction of fences and retaining walls, and setback requirements from critical areas (See Attachment 3 for current regulations).

The purpose of the code amendment is to clarify the height, setback requirements, allowable location, and definition of fences and retaining walls, as well as address safety concerns and aesthetics for such features. Current wall and fencing regulations as per LSMC 14.48.050(e) require that fences do not exceed 42 inches in height within the front yard setback abutting a public right-of-way or within 10 feet of an exterior side yard right-of-way. When a fence or hedge is located on top of or within five feet of a retaining wall, the wall and fence/hedge is to be measured as one structure for determining setback requirements. Examples of non-compliance with these regulations are prolific throughout the city. The city frequently receives permit requests and/or questions on the height, location, setbacks, sight visibility, and intent of LSMC 14.48.050(e) and city code enforcement receives code complaints. The lack of clarity and frequent instances of property owners having fences/walls not meeting city code makes it harder for staff to enforce. In addition, this code amendment will also address the practice of recent developments constructing large retaining walls that block sun, air, and light to adjacent properties, require safety fencing on retaining walls four feet or above, determine the proximity of retaining walls near critical areas, and provide regulations that create aesthetically pleasing fences and walls in developments (See Attachment 1 for more detail in the Scope of Work).

The code amendment is likely to be divided into categories for future review and consideration as there is no one prescriptive answer that will address all situations. Retaining walls and fences provide different functions and purposes depending on the need; ranging from structural load-bearing walls to aesthetically pleasing landscape features.

***Data Collection and Important Subsections to be Reviewed***

The extent of data collection by staff thus far has included photos and preliminary research of other jurisdictions. The photos taken demonstrate existing conditions and identify examples of what the city is seeking to accomplish with the code amendment (See Attachment 2 for example photos).

Chapters that will be reviewed for changes currently include: Definitions (14.08), Exceptions to Building Setback Requirements (14.48.050), Supplementary Use Regulations – Fence Permit Required (14.44.420), Building and Construction (14.80), and Critical Areas – Building Setbacks (14.88.285).

***Next steps***

Staff will conduct additional research on the regulations of retaining walls and fences in other jurisdictions as well as further coordinate with the Building Department, the Public Works Department, and any other applicable departments. Staff will discuss the code amendment with City Council at a work session in the near future.

Other needed changes may be revealed as staff completes the initial research and review process for the code amendments. Staff is proposing a six-month process to review the code and draft revisions for the Planning Commission and the City Council to consider. Other tasks included in the scope of the project include SEPA notification and actions, various staff reports and briefings to the Planning Commission and City Council, WA Department of Commerce 60-day review, public notification and public hearings as needed.

**ATTACHED:**

- 1) Scope of Work
- 2) Photos
- 3) Existing Chapters 14.08, 14.48.050, 14.44.420, 14.80, and 14.88.285 LSMC

## ATTACHMENT 1



# Scope of Work

**Subject: Code Amendment; Fences and Retaining Walls, (LUA2018-0109)  
Chapters 14.08, 14.48.050, 14.44.420, 14.80, and 14.88.285 LSMC**

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The purpose of this code amendment is to:

- Clarify whether retaining walls are subject to setback requirements (whether they are considered structures)
- Determine whether fences can be located on retaining walls and to what height
- Clarify how to measure the height of a retaining wall/fence combination
- Provide regulations that create aesthetically pleasing fences and retaining walls in developments
- Alleviate recent development practices of constructing large retaining walls within subdivision developments that block sun, air, and light to homeowner's properties. This has associations with the 2014 Stormwater Management Manual for Western Washington (SWMMWW) and site grading.
- Require safety fencing (vinyl coated chain link fencing or similar to be long lasting and low maintenance) on retaining walls 4 feet and above. Homeowners may still construct a wood fence for privacy, but safety fencing would be on the outside.
- Address fence height within side and rear setbacks adjacent to right-of-way – sight distance requirements
- Consider terracing of retaining walls/fences over a specified height
- Determine the proximity of retaining walls near critical areas
- Balance aesthetics, safety, privacy, and property rights with the code amendment
- Reduce potential conflicts of standards in city code and the EDDS

Regulations affected:

- Chapter 14.08 LSMC
- Chapter 14.48.050 LSMC
- Chapter 14.44.420 LSMC
- Chapter 14.80 LSMC
- Chapter 14.88.285 LSMC
- EDDS, Engineering Design and Development Standards

Timeline:

- Approximately 6 months for final adoption.

## ATTACHMENT 2



## Photo Examples

Subject: Code Amendment; Fences and Retaining Walls (LUA2018-0109)

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### Undesirable Examples:



Fence/Retaining Wall Combinations - Daysala Plat – S. Lake Stevens Road and internal lots





Sight Visibility Concerns – 30<sup>th</sup> St NE & 99<sup>th</sup> Ave NE



Fence Maintenance/Safety Concerns – 96<sup>th</sup> Ave NE



Six foot tall fence adjacent to right-of-way – 99<sup>th</sup> Ave SE & 2<sup>nd</sup> St SE



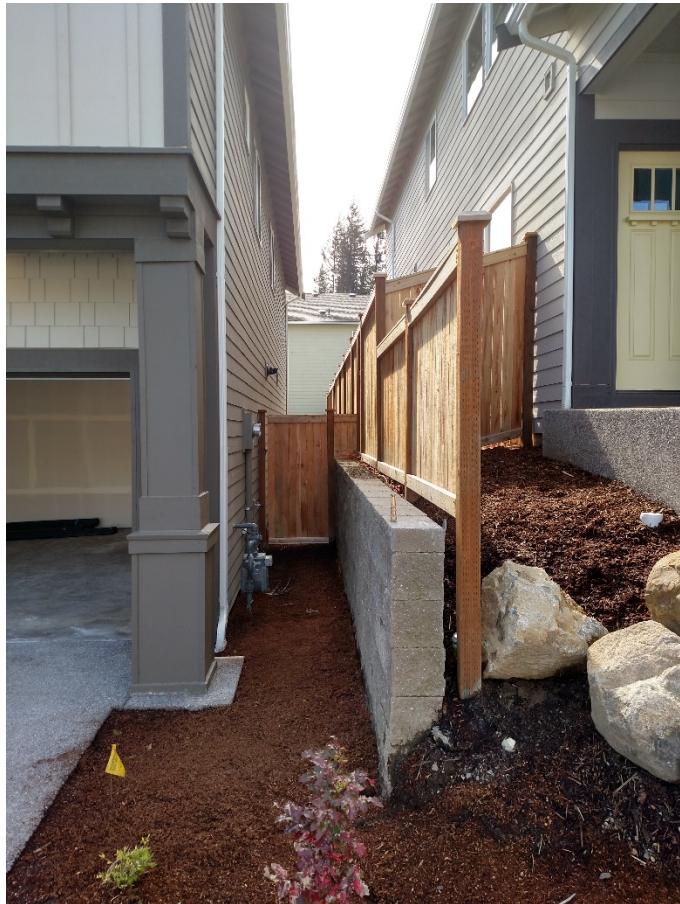
Retaining Wall/Fence Combination – 99<sup>th</sup> Ave SE



Large Retaining Walls – Eagle Glen North Plat – 99<sup>th</sup> Ave SE



Large Retaining Walls – Eagle Glen North Plat – 99th Ave SE

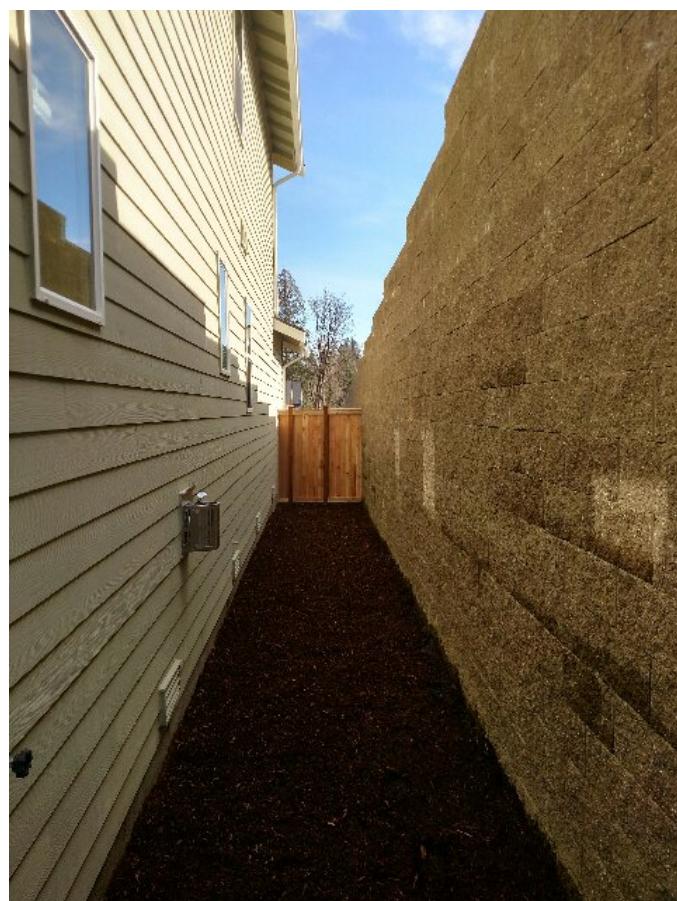


Fence/Wall Combinations (narrow side yards with little light, sun, air)  
Eagle Glen North Plat – 99<sup>th</sup> Ave SE





Fence/Wall Combinations (small rear & side yards with little light, sun, air and large walls)  
Eagle Glen North Plat – 99<sup>th</sup> Ave SE





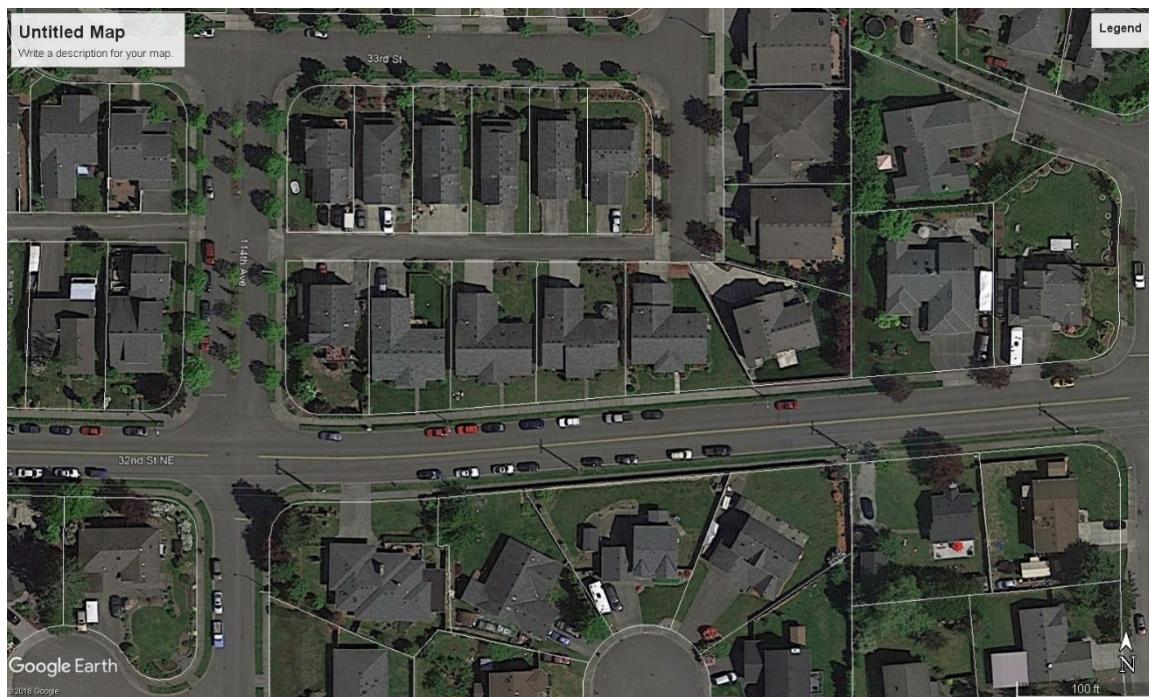
Six-Foot-High Fence adjacent to Right-of-Way – Brookside Plat – S. Lake Stevens Road



Large retaining walls on Nourse Plat – Callow Road



Six-Foot-High Fence adjacent to Right-of-Way – Brookside Plat – S. Lake Stevens Road

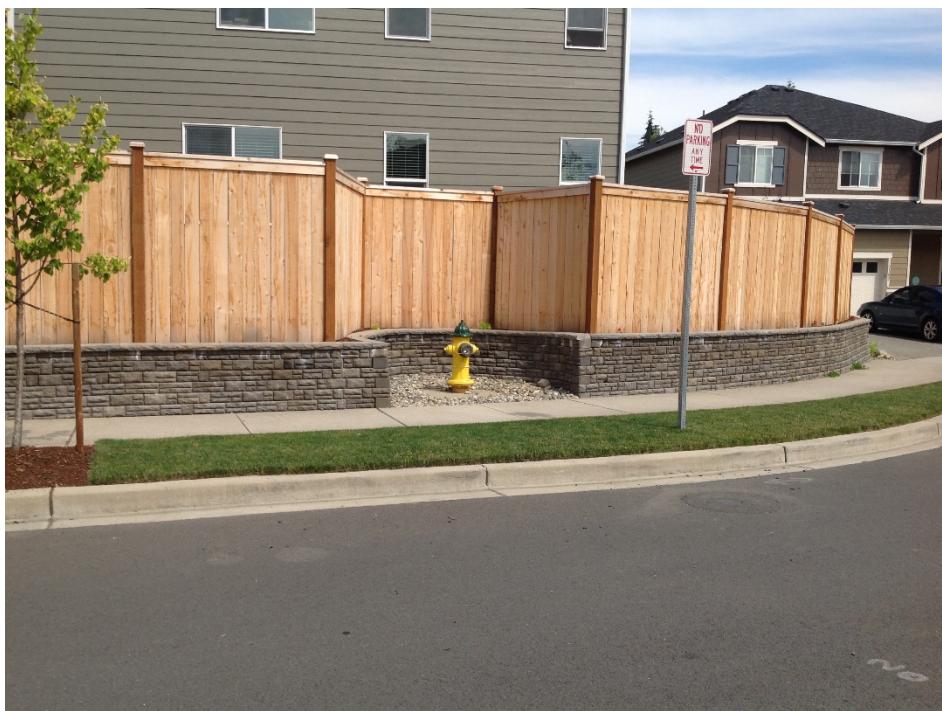


Area of city with yards fronting and rear-facing on 32<sup>nd</sup> St NE

## Desirable Examples:



Whispering Meadows Plat – 102<sup>nd</sup> Ave NE





48"-Foot-High Chain Link Fence adjacent to Right-of-Way with solid wood fence behind  
Brookside Plat – S. Lake Stevens Road



Fence/Wall Combination Adjacent to Right-of-Way – Maple Rock Plat – 20<sup>th</sup> St SE



Fence/Wall Combination Adjacent to Right-of-Way – Maple Rock Plat – 20<sup>th</sup> St SE



Fence fronting on Right-of-Way – Vernon Road



Retaining Wall/Chain-link Fence Combination – 99<sup>th</sup> Ave SE



Retaining Wall/Chain-link Fence Combination – Ingraham Blvd, Marysville



Grading to Natural Contours (no walls needed) – Ingraham Blvd, Marysville



Grading to Natural Contours (no walls needed) – Ingraham Blvd, Marysville



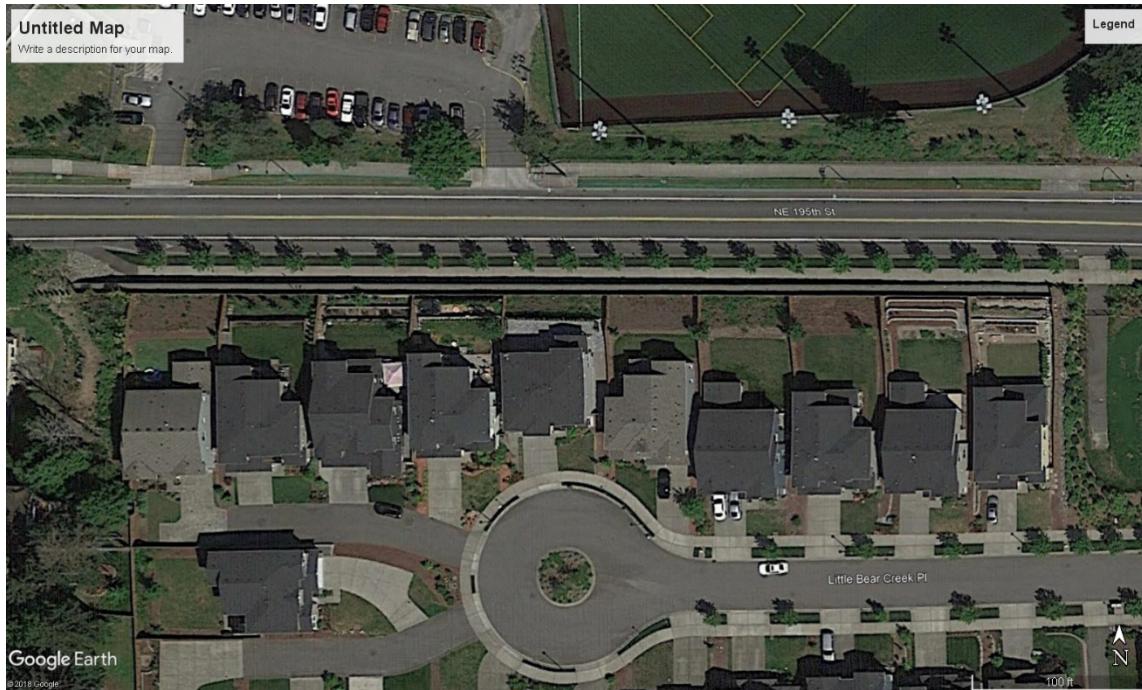
Retaining wall with chain link fence combo, grading to natural contours – Ingraham Blvd, Marysville



Retaining wall with gap behind then solid wood fence, grading to natural contours - Woodinville



Lots graded to natural contours, with homeowners building rear yard landscaping features - Woodinville



Aerial view of same subdivision showing the rear yard landscaping features - Woodinville



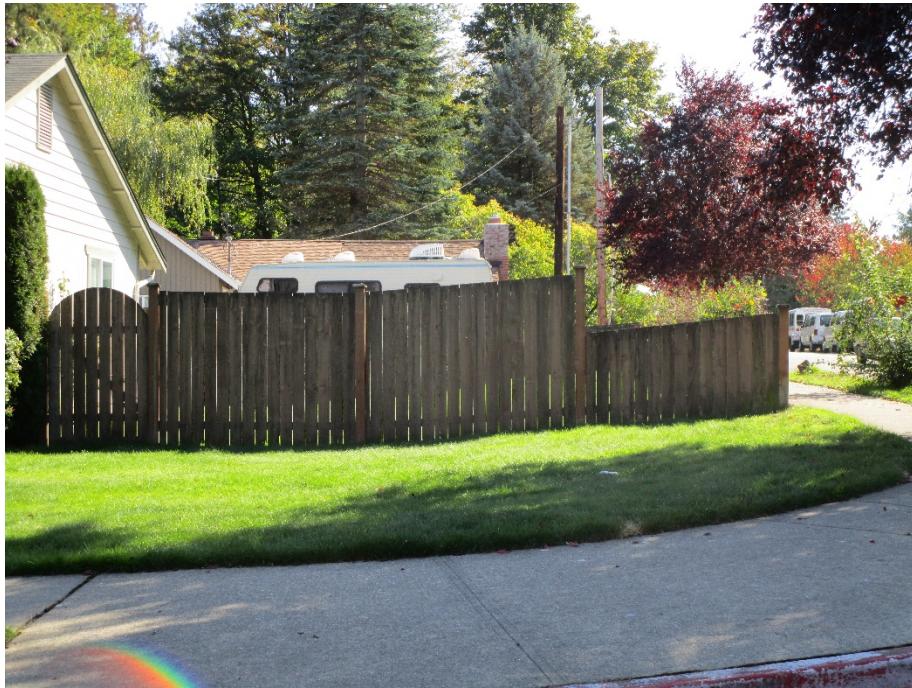
Rear yards at Cavalero Ridge – natural sloping with few retaining walls



Terraced retaining wall with vegetation – Snohomish Station



Small retaining wall with 42 inch fence on top – 33<sup>rd</sup> St NE



42 inch fence adjacent to ROW, then stepped up to a 6 foot fence beyond setbacks – 33<sup>rd</sup> Pl NE

## TITLE 14 -- LAND USE CODE

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results in a gain in wetland function but does not result in a gain in wetland acres.

*Religious Organization.* Means the federally protected practice of a recognized religious assembly, school, or institution that owns or controls real property.

*Religious, Political, or Other Noncommercial Messages.* Messages which state scripture, opinion, ideas, sentiments and postures and do not advertise events, goods and services of any kind.

*Repair or Maintenance Activities.* An action to restore the character, size, or scope of a project only to the previously authorized condition.

*Residence, Duplex.* A two-family residential use in which the dwelling units share a common wall (including without limitation the wall of an attached garage or porch) and in which each dwelling unit has living space on the ground floor and a separate, ground floor entrance.

*Residence, Multifamily.* A residential use consisting of a building containing three or more dwelling units. For purposes of this definition, a building includes all dwelling units that are enclosed within that building or attached to it by a common floor or wall (even the wall of an attached garage or porch).

*Residence, Multifamily Apartments.* A multi-family residential use other than a multifamily conversion or multifamily townhouse.

*Residence, Multifamily Conversion.* A multi-family residence containing not more than four dwelling units and results from the conversion of a single building containing at least 2,000 square feet of gross floor area that was in existence on the effective date of this provision and that was originally designed, constructed and occupied as a single-family residence.

*Residence, Multifamily Townhomes and Row Houses.* A multi-story structure containing a group of three or more attached dwelling units, in which each dwelling unit shares a common wall (including without limitation the wall of an attached garage or porch) with at least one other dwelling unit; has a separate, ground floor entrance; and

each dwelling unit has open space on at least two sides.

*Residence, Single-Family Attached, One Dwelling Unit Per Lot.* A residential use consisting of a single building containing two dwelling units which share a common wall (including without limitation the wall of an attached garage or porch), but located on two separate lots containing no other dwelling units in such a manner that a lot line bisects the building along the common wall and that each dwelling unit is completely on a separate lot.

*Residence, Single-Family Detached, More Than One Dwelling Per Lot.* A residential use consisting of two or more single-family detached dwelling units on a single lot.

*Residence, Single-Family Detached, One Dwelling Unit Per Lot.* A residential use consisting of a single detached building containing one dwelling unit and located on a lot containing no other dwelling units.

*Residence, Two-Family.* A residential use consisting of a building containing two dwelling units. If two dwelling units share a common wall, even the wall of an attached garage or porch, the dwelling units shall be considered to be located in one building.

*Residence, Two-Family Conversion.* A two-family residence resulting from the conversion of a single building containing at least 2,000 square feet of gross floor area that was in existence on the effective date of this provision and that was originally designed, constructed and occupied as a single-family residence.

*Retail Trade.* Enterprises, such as department stores, electronic stores and hardware stores, engaged in direct retail sales of goods and merchandise to the public.

*Retaining Wall.* A wall designed to resist lateral earth and/or fluid pressures, including any surcharge in accordance with accepted engineering practice.

(a) "Exposed wall height is the vertical distance measured from the finished grade at the bot-

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tom of the wall (lower soil grade) to the finished grade at the top of the wall. This height does not include the wall and depth of footing below grade.

(b) "Retained wall height" is the vertical distance measured from the bottom of the footing to the finished grade at the top of the wall. It includes the wall and depth of footing below grade.

(c) "Surcharge" is a vertical load imposed on retained soil that may impose a lateral force in addition to the lateral earth pressure of the retained soils. Examples of surcharge include sloping retained soil, structure footings supported by the retained soil or adjacent vehicle loads supported by the retained soil.

*Right-of-Way.* Land dedicated primarily to the movement of vehicles and pedestrians and providing for primary access to adjacent parcels. Secondly, the land provides space for utility lines and appurtenances and similar components.

*Riparian Area.* A transitional area between terrestrial and aquatic ecosystems and which is distinguished by gradients in biophysical conditions, ecological processes, and biota.

*Riparian Habitat.* An ecosystem that borders a stream which is occasionally flooded and periodically supports predominantly hydrophytes.

*Riparian Habitat Zone.* The riparian habitat zone includes those watercourses within the special flood hazard area and adjacent land areas that are likely to support aquatic and riparian habitat that correlate locally to the applicable, adopted fish and wildlife conservation area buffers. The size and location of the riparian habitat zone is dependent on the type of water body, as described in Section 14.88.430. The riparian habitat zone includes the water body and adjacent lands, measured perpendicularly from ordinary high water on both sides of the water body.

*Riparian Zone.* A transitional area between aquatic ecosystems (lakes, streams, and wetlands) and upland terrestrial habitats.

*Road.* An open way for vehicles. All public and private ways used to provide motor vehicle access to and from a destination.

*Road, Private.* A privately maintained easement or parcel created to provide vehicle access from a public road to one or more lots or units.

*Rooming House.* See *Boarding House*.

*Scrub-Shrub Wetland.* A wetland with at least 30 percent of its surface area covered with woody vegetation less than 20 feet in height.

*Secondary School* (definition related to recreational marijuana facilities regulations only). A high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to 12 and recognized by the Washington State Superintendent of Public Instruction.

*Secure Community Transition Facility.* A residential facility for persons civilly committed and conditionally released to a less restrictive alternative under Chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facilities established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

*Seismic Hazard Areas.* Areas that, due to a combination of soil and groundwater conditions, are subject to severe risk of ground shaking, subsidence or liquefaction of soils during earthquakes.

*SEPA.* The Washington State Environmental Policy Act of 1971 (Chapter 43.21C RCW).

*SEPA Rules.* Chapter 197-11 WAC.

*Servient Lot.* Any lot which has the burden of providing an access easement for use by other lots.

*Setbacks.* Means the required distance measured horizontally between every building, structure or use and the lot lines, planned rights-of-way, rights-of-way or streets

*Shared Driveway.* A private driveway located on two easements used for the access of one or

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- (3) As used in this section, the term "building" includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. It also includes any element that is substantially a part of the building, such as bay windows and chimneys, and not a mere appendage, such as a flagpole. Without limiting the generality of the foregoing, for the purpose of determining setbacks the following structures are to be considered buildings:
  - (i) Gas pumps and overhead canopies or roofs;
  - (ii) Fences and hedges taller than 42 inches.
- (4) Eaves and other minor architectural features may project into the required setback up to 18 inches.

(b) Whenever a lot in a residential district abuts a nonresidential district, and its required setback is greater than that of the nonresidential lot, the nonresidentially zoned lot shall observe the more restrictive setback. Where a lot zoned General or Light Industrial shares a boundary with a residentially zoned lot, the setback for the industrial property along that common boundary shall be 30 feet.

(c) In the High Urban Residential District, one five-foot interior side yard setback of a lot may be reduced to zero feet for portions of the house that share a common wall with the home on the adjacent lot. Portions of a house which do not share a common wall must be set back a minimum of five feet. The Fire and Building Codes have special building requirements which must be met when setbacks are less than five feet.

(d) All docks and other permissible overwater structures shall be set back pursuant to the Shoreline Master Program, Chapter 4, Section C.3. For the purposes of this section each prop-

erty line extending into the lake shall be construed as extending at the same angle as the property line on shore. (Ord. 903, Sec. 38, 2013; Ord. 898, Sec. 7, 2013; Ord. 796, Sec. 8, 2009; Ord 666, Sec. 8, 2002; Ord. 612, Sec. 1, 1999; Ord. 590, 1998; Ord. 468, 1995)

### 14.48.050 Exceptions to Building Setback Requirements.

- (a) The following modifications to the setback requirements identified in Section 14.48.040 shall be allowed:
  - (1) In the Suburban Residential and Waterfront Residential districts only, where the high point of the roof or any appurtenance of an accessory building exceeds 12 feet in height, the accessory building shall be set back from the rear lot lines, tracts or easements an additional one foot for every foot of height exceeding 12 feet.
  - (2) In single-family residential zones, accessory structures may be located within the exterior side yard of a corner lot, provided the accessory structure meets the following conditions:
    - (i) The gross floor area of all accessory structures within the reduced setback area does not exceed 200 square feet.
    - (ii) The height of the accessory structure does not exceed eight feet.
    - (iii) The accessory structure is screened to a minimum height of six feet with an opaque fence or densely planted vegetation.
    - (iv) The accessory structure respects the minimum front yard setback and shall be no closer to the front property line than that of the principal house.
    - (v) The accessory structure is located no closer than 10 feet to the exterior side property line.

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- (b) In all single-family residential zones, the building setbacks from the street of the underlying zone may be reduced by five feet for living portions of the principal house only. This reduction does not apply to garages or other nonhabitable areas.
- (c) In all single-family residential zones, the setback from a critical area buffer may be reduced to five feet for uncovered decks, provided sufficient room is provided to construct and maintain the deck without disturbing the buffer area.
- (d) In all single-family residential zones, unenclosed front porches may be constructed to be as close as 15 feet of the ultimate street right-of-way.
- (e) In all residential zones, fences which do not exceed six feet in height may be located along property lines which do not abut a public right-of-way. No fence may exceed 42 inches in height within the front yard setback abutting a public right-of-way or within 10 feet of an exterior side yard right-of-way. On exterior side yards, the area between the fence and sidewalk shall be maintained by the property owner. Where fences are built or hedges are maintained on top of or within five feet of a retaining wall on the uphill side, the retaining wall and fence or hedge shall be measured as one structure for the purposes of determining setback requirements. The height shall be the vertical distance measured from the mean elevation of the finished grade around the perimeter of the retaining wall to the highest point of the hedge or fence. (Ord. 903, Sec. 39, 2013; Ord. 811, Sec. 56, 2010; Ord. 741, Sec. 7, 2007; Ord. 676, Sec. 45, 2003; Ord. 666, Sec. 9, 2002; Ord. 595, 1999; Ord. 468, 1995)

### 14.48.055 Maximum Impervious Surface.

Unless otherwise provided for elsewhere in Title 14 or the Shoreline Master Program, the maximum impervious surface shall not exceed 40 percent of a lot for development in single-family

zoning districts, except that the impervious surface areas for development in the High Urban Residential (HUR) zoning district shall not exceed 65 percent of the lot. (Ord. 947, Sec. 2, 2015; Ord. 595, 1999)

### 14.48.060 Building Height Limitations.

- (a) For purposes of this section the height of a building shall be the vertical distance measured from the mean elevation of the finished grade around the perimeter of the building to the highest point of the building.
- (b) Building height limitations in the various zoning districts shall be as listed in Table 14.48-I.
- (c) The following features are exempt from the district height limitations set forth in subsection (b) of this section, provided they conform to the standards contained in subsection (d) of this section:
  - (1) Chimneys, church spires, elevator shafts, and similar structural appendages not intended as places of occupancy or storage;
  - (2) Flagpoles and similar devices;
  - (3) Heating and air conditioning equipment, solar collectors, and similar equipment, fixtures, and devices.
- (d) The features listed in subsection (c) of this section are exempt from the height limitations set forth in subsection (b) of this section if they conform to the following requirements:
  - (1) Not more than one-third of the total roof area may be consumed by such features.
  - (2) The features described in subsection (c)(3) of this section must be set back from the edge of the roof a minimum distance of one foot for every foot by which such features extend above the roof surface of the principal building to which they are attached.
  - (3) The permit-issuing authority may authorize or require that parapet walls be constructed (up to a height not exceeding that of the features screened) to shield the

mended and required by the City's current insurance provider. Said insurance shall list the City of Lake Stevens as additional insured and will include the endorsement of said policy.

(e) The event sponsor shall be responsible to ensure that all food vendors have the necessary permits per the current Snohomish County Health District requirements or other applicable State or County regulatory agency. (Ord. 821, Sec. 8, 2009; Ord. 676, Sec. 40, 2003)

**14.44.410 Sales of Food from Stationary Motor Vehicles on Property Not Owned by the City.**

(a) This section applies to events which are wholly or partially located on property not owned by the City of Lake Stevens.

(b) Sales of food from stationary motor vehicles during events that are wholly or partially on property not owned by the City are prohibited except when a part of an event for which an event permit has been issued or as an accessory use pursuant to the provisions contained in Chapter 14.40. (Ord. 821, Sec. 9, 2009; Ord. 676, Sec. 41, 2003)

**14.44.420 Fence Permit Required.**

(a) A building permit shall be obtained for any new fence which exceeds six feet in height.

(b) Where allowed, fences taller than six feet shall meet the requirements of the International Building Code (IBC).

(c) The Department of Planning and Community Development shall approve a building permit for a fence if it finds that the proposed fence is consistent with Chapter 14.80 (Building and Construction) and:

- (1) Meets all applicable setback requirements;
- (2) Does not exceed applicable height requirements;
- (3) Does not adversely impact utility or access easements;

(4) Does not create a traffic hazard, in the opinion of the Public Works Director, by limiting sight-lines for vehicles at locations such as road and alley intersections, and where vehicles cross sidewalks;

(5) Will not be detrimental to the public health, safety and general welfare.

(d) It shall be the responsibility of the property owner to ensure the fence is placed in the proper location. Exceptions to setback requirements for fences are located in Section 14.48.050(e). (Ord. 811, Sec. 53, 2010; Ord. 746, Sec. 6, 2007; Ord. 676, Sec. 42, 2003)

**Part V. Multifamily Apartments Annexed into the City**

**14.44.500 Authority.**

This chapter contains the City's procedures and policies related to the expansion or replacement of existing multifamily structures located in the Suburban Residential Zoning District, annexed into the City on or after January 1, 2006. (Ord. 871, Sec. 3, 2012)

**14.44.510 Conditional Use Permit Required.**

Any requests to expand and/or replace existing multifamily structures (regardless of reason), located in the Suburban Residential Zoning District, annexed into the City on or after January 1, 2006, shall require a Conditional Use Permit per Section 14.16C.045 prior to approval of the expansion and/or replacement. (Ord. 871, Sec. 3, 2012)

**14.44.520 Additional Requirements.**

(a) The proposed expansion and/or replacement cannot increase the number of units.

(b) The proposed expansion and/or replacement must comply with current regulations and obtain all applicable permits and approvals, including but not limited to a building permit per the current International Construction Codes.

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secured a sewage disposal permit per Chapter 14.60 (Utilities). (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 778, Sec. 2, 2008)

### 14.80.060 Construction and Use.

Building permits issued on the basis of plans and applications approved by the Building Official authorize only the construction set forth in such approved plans and applications and no other construction. Nor does the issuance of building plans authorize use or arrangement of structures or property. Authorization of use of property or arrangement of structures is authorized by the issuance of required land use approvals pursuant to Section 14.16A.215 (Land Use Permits Required). Construction different than that authorized shall be deemed a violation of this code and punishable as provided by Chapter 14.28 (Enforcement and Review). (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 811, Sec. 70, 2010; Ord. 778, Sec. 2, 2008)

### 14.80.070 Accessory Buildings.

Accessory buildings shall not be constructed prior to the commencement of construction of the main building and shall comply with Chapter 14.48 (Density and Dimensional Regulations). (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 778, Sec. 2, 2008)

### 14.80.080 Docks and Over-Water Structures.

Building permits shall be required for all docks, bridges or other over-water structures and shall comply with the regulations of this title. (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 778, Sec. 2, 2008)

### 14.80.090 Fences.

- (a) Building permits shall be required for all fence construction for fences over six feet in height from median grade.
- (b) Height and setbacks shall comply with Section 14.48.050(e).
- (c) Fence permits shall be approved as set forth in Section 14.44.420. (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 811, Sec. 71, 2010; Ord. 778, Sec. 2, 2008; Ord. 746, Sec. 11, 2007)

### 14.80.100 Retaining Walls.

Building permits shall be required for all retaining walls four feet and higher in height, measured from the bottom of the footing. Building permits shall be required for all retaining walls with a surcharge. All retaining walls over four feet in height from the bottom of the footing shall be engineered by a professional engineer registered in the State of Washington. (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 811, Sec. 72, 2010; Ord. 778, Sec. 2, 2008; Ord. 746, Sec. 12, 2007)

### 14.80.110 Signs.

Building permits shall be required for sign installations and shall comply with the regulations of Chapter 14.68 (Signs). (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh. A), 2013; Ord. 833, Sec. 2 (Exh. A), 2010; Ord. 778, Sec. 2, 2008)

### 14.80.120 Repairs and Maintenance.

Nothing in this code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting public safety, upon order of such official, nor to prevent the improvement of a single-family house without expanding its exterior dimensions. (Ord. 972, Sec. 2 (Exh. A), 2017; Ord. 897, Sec. 2 (Exh.

## TITLE 14 -- LAND USE CODE

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interest. (Ord. 811, Sec. 73, 2010; Ord. 773, Sec. 2, 2008)

### 14.88.280 Maps and Inventory.

The approximate location and extent of critical areas in the City are displayed on various inventory maps available at the Department of Planning and Community Development. More data will be included as inventories are completed in compliance with the requirements of the Growth Management Act. Maps and inventory lists are guides to the general location and extent of critical areas. Critical areas not shown are presumed to exist in the City and are protected under all the provisions of this chapter. In the event that any of the designations shown on the maps or inventory lists conflict with the criteria set forth in this chapter, the criteria and site-specific conditions shall control. Other mapping sources may include:

- (a) Washington Department of Fish and Wildlife Priority Habitat and Species maps.
- (b) Washington State Department of Natural Resources official water type reference maps, as amended.
- (c) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission.
- (d) Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps.
- (e) Washington State Department of Natural Resources Natural Heritage Program mapping data.
- (f) Lake Stevens and/or Snohomish County maps. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

### 14.88.283 Pesticide Management.

Pesticide use is not allowed in critical areas, including critical area buffers, unless it is determined by the Planning and Community Development Director that there is no alternative to controlling invasive species. If pest control is

being proposed as mitigation measures to control invasive species, a pesticide management plan must be submitted to the Planning Department. The pesticide management plan must be part of the critical areas report required in Section 14.88.270 for any development proposal, and shall include why there is no other alternative to pesticide use, mitigation of pesticide use, planned application schedules, types of pesticides proposed for use, and a means to prevent or reduce pesticide movement to groundwater and surface water. The report shall be prepared by a qualified specialist. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

### 14.88.285 Building Setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

- (a) Uncovered decks;
- (b) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and
- (c) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations as adopted. (Ord. 773, Sec. 2, 2008; Ord. 741, Sec. 2, 2007)

### 14.88.287 Fencing and Signage.

Wetland fencing and signage adjacent to a regulated wetland or stream corridor shall be required.

- (a) Fencing shall be smooth wire or an alternative approved by the Planning and Community Development Director.
  - (1) Fencing must be a permanent structure installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas with a minimum gap of one and one-half feet at the bottom of the fence, and maximum



Staff Report  
City of Lake Stevens  
Planning Commission  
Briefing  
Date: **October 3, 2018**

**SUBJECT:** LUA2018-0108- City initiated code amendment regarding Wireless Communications

**CONTACT PERSON/DEPARTMENT:** Joshua Machen, *Planning Manager* / Russ Wright, *Community Development Director*

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**SUMMARY:**

The City is drafting new and revised regulations regarding wireless communication facilities. This briefing addresses the first of three primary components of our wireless communication facility updates.

Specifically, the attached draft ordinance broadens the City's definitions and regulations regarding consistency with the "Spectrum Act" and the FCC's implementing policies and directives.

While the attached draft regulations contain a broad range of available regulations related to wireless communication facilities, staff recognizes that we have additional work to do in organizing and consolidating these regulations. Future drafts will also include revisions to the use table in 14.40 regarding the type of permitting required for wireless communication towers vs non-wireless communication towers. Staff will also propose new height restrictions for new towers after performing additional research on other jurisdictions and new FCC regulations.

**ACTION REQUESTED OF PLANNING COMMISSION:**

Review the following attachments:

- A. Existing regulations in LSCM 14.44.360 and new proposed chapter 14.62.

Then provide staff feedback on revised draft regulations governing wireless communication facilities.

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**Background:**

1. *Spectrum Act* - Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Attachment A) (known as the Spectrum Act) mandates that a State or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. In October 2014, the Federal Communications Commission (FCC) unanimously approved rules interpreting Section 6409(a). The City needs to modify our regulations to be consistent with the Spectrum Act and the FCC rules.

**Purpose of Code Amendment**

Bring the City's codes and regulations into compliance with the Spectrum Act and the adopted FCC rules regarding the permitting and siting of wireless communication facilities. Modify the city regulations to recognize the changing technology related to small-cell facility networks and put into place regulations

defining small cell facilities and permitting procedures to allow their development along with proper aesthetic and concealment regulations. The code amendments would also alter or develop templates for franchise agreements for wireless providers to allow deployment of small cell facility networks within the City rights-of-way.

Staff has initially drafted a new chapter that is divided into four distinct sections:

- Section 1- contains the general provisions, definitions and defines when a permit is required.
- Section 2-addresses new wireless communication facilities (WCF's) and new towers. This is where our existing regulations were moved to and details added.
- Section 3- contains the regulations related to eligible facility modifications (EFM's) as regulated by the Spectrum Act and FCC.
- Section 4 – Small cell regulation (to be included in future draft)

The following is a brief explanation of proposed changes to our existing regulations:

**Wireless Communication Facilities (WCF's)** – the drafted provisions continue to allow new WCF's throughout the City including new towers were necessary and tower height allowances that meet industry needs. Additional provisions were added to address aesthetic design regulations and screening requirements, these regulations could be bolstered to more specifically address concealment, especially within our downtown/historic subarea.

**Eligible Facility Modification (EFM's)** - these provisions are drafted to allow certain modifications to eligible facilities in accordance with the spectrum act. These regulations allow for collocation or swapping of existing antennas but do not address new facilities. This section also contains specific timelines (shot clock) for issuing these types of permits.

#### ***Next steps***

Refine the draft regulations and begin review of the Small Cell Facility draft regulations.

#### ***Attachments***

A Existing code LSMC 14.44.360 and drafted new chapter LSMC14.62

## Chapter 14.08 BASIC DEFINITIONS AND INTERPRETATIONS

Sections:

**14.08.010 Definitions of Basic Terms**

**14.08.020 Recodified**

**14.08.010 Definitions of Basic Terms.**

**The following definitions are being deleted from this chapter and are being integrated into a new chapter LSMS 14.62**

~~Wireless Communication Tower. A support structure to which is attached equipment used for the transmission and/or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, and equipment cabinet.~~

~~Wireless Communications. Any personal wireless services as defined in the Telecommunications Act of 1996 or as may be subsequently amended. This includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed.~~

## Chapter 14.44 SUPPLEMENTARY USE REGULATIONS

~~14.44.360 Wireless Communication Towers and Antennas.~~

~~(a) No wireless communication tower may be located within 1,000 feet of an existing or previously approved tower.~~

~~(b) No wireless tower may be located within 1,000 feet of the shoreline of Lake Stevens.~~

~~(c) All new towers shall be designed to reasonably accommodate future installation of a second array.~~

~~(d) A new antenna or array placed on a previously approved tower is exempt from further land use permit approvals, provided it does not add more than 25 feet to the height of the tower.~~

~~(e) A new antenna or array placed on an existing structure such as a water tank or building is exempt from a land use permit, provided the new antenna or array extends no higher than 25 feet above the top of the structure to which it is being added.~~

(f) Speculative wireless towers are prohibited. As part of the land use permit process, the applicant shall demonstrate that there is a licensed provider of telecommunication services contractually committed to using the proposed pole to provide wireless communication services.

(g) Screening of the base of the pole, including any security fences and equipment cabinets, shall be done in a manner as to blend into the site so as the screening does not call undue attention itself. Unless otherwise required by the Federal Aviation Administration, wireless facility support structures shall be of a neutral color to minimize visibility.

(h) Should the communications element of a tower be abandoned and cease functioning for a period of one year, the tower shall be removed from the site. At the time of application, a notarized statement from the property owner shall be provided to the City and recorded against the property which affirms that:

1. The signee is the owner; and
2. He or she understands that if the use is abandoned the tower must be removed within one year; and
3. If the City takes action to enforce this rule, the property owner, heirs or successors are ultimately responsible for the removal. (Ord. 608, Sec. 3, 1999)

**New:**

**Chapter 14.62**  
**Wireless Communication Facilities**

Sections:

Part I. General Provisions

- 14.62.010 Purpose
- 14.62.020 Definitions
- 14.62.030 Permit required

Part II. Wireless Communication Towers and Antennas

- 14.62.040 Application requirements
- 14.62.050 Permit conditions
- 14.62.060 Permit enforcement.
- 14.62.070 Prioritized locations.
- 14.62.080 Development standards
- 14.62.090 Electromagnetic field (EMF) standards compliance.

### Part III. Eligible Facility Modifications (EFM)

[14.62.100 Purpose](#)

[14.62.110 Applicability – Relationship to other rules and regulations](#)

[14.62.120 Application submittal requirements – Determination of completeness](#)

[14.62.130 Completed Application – Determination – Tolling](#)

[14.62.140 Substantial change criteria](#)

### Part IV. Small Cell Facilities

#### Future Regulations

### Part I. General Provisions

#### **14.62.010 Purpose.**

This chapter addresses the issues of location and appearance associated with wireless communication facilities (“WCFs”). It provides adequate siting opportunities through a wide range of locations and options which minimize safety hazards and visual impacts sometimes associated with wireless communications technology. The chapter encourages siting of facilities on existing buildings or structures, co-location of several providers’ facilities on a single support structure, and visual mitigation measures to maintain neighborhood appearance and reduce visual clutter in the city.

#### **14.62.020 Definitions.**

(a) “Antenna(s)” means any system of electromagnetically tuned wires, poles, rods, reflecting discs or similar devices used to transmit or receive electromagnetic waves between terrestrial and/or orbital based points, including, but not limited to:

(1) Omni-directional (or “whip”) antenna(s), which transmits and receives radio frequency signals in a 360-degree radial pattern;

(2) Directional (or “panel”) antenna(s), which transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees;

(3) Parabolic antenna(s) (or “dish” antenna(s)), which is a bowl-shaped device for the reception and/or transmission of communications signals in a specific directional pattern; and

(4) Ancillary antenna(s), which is an antenna less than 12 inches in its largest dimension and is not directly used to provide personal wireless communications services, such as a global positioning satellite (GPS) antenna.

(b) “Base Station” means a structure or equipment at a fixed location that enables FCC-licensed or

authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

- (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).
- (3) Any structure other than a tower that, at the time the relevant application is filed with the City of Lake Stevens under this section, supports or houses equipment described in paragraphs (b)(1)-(b)(2) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the City of Lake Stevens under this section, does not support or house equipment described in (b)(1)-(2) of this section.

(c) "Collocation" means mounting or installation multiple providers' antennas and equipment on a single eligible support structure or equipment pad area for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

(d) "Electromagnetic field" or "EMF" means the field produced by the operation of equipment used in transmitting and receiving radio frequency signals.

(e) "Eligible Facilities Request" means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- (1) Collocation of new transmission equipment;
- (2) Removal of transmission equipment; or
- (3) Replacement of transmission equipment.

(f) "Eligible support structure" means any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City of Lake Stevens under this section.

(g) "Equipment facility" means any structure used to house electronic equipment, cooling systems and back-up power systems associated with a WCF, including shelters, enclosures, cabinets and other similar structures.

(h) "Existing" means a constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

(i) "Site" for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(j) "Substantial Change" means a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(1) For towers, other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(2) For towers, other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(4) It entails any excavation or deployment outside the current site;

- (5) It would defeat the concealment elements of the eligible support structure; or
- (6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (j)(1)-(j)(4) of this section.

(k) "Support structure" means any structure, designed and constructed specifically to support an antenna array, including a monopole, self-supporting (lattice) tower, guy-wire support tower and any other similar structures. Any device (attachment device) used to attach a WCF to an existing structure or building (attachment structure) shall be excluded from the definition of and regulations applicable to support structures.

(l) "Transmission Equipment" means equipment that facilitates transmission for any FCC- licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(m) "Tower" means any structure built for the sole or primary purpose of supporting any FCC- licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(n) "Wireless communication facility" or "WCF" means an unstaffed facility for the transmission and/or reception of radio frequency, microwave or other signals for commercial communications purposes, including and typically consisting of antennas, equipment shelter or cabinet, transmission cables, a support structure required to achieve the necessary elevation, and reception and transmission devices and antennas.

(o) "Wireless communication tower"-see definition for "tower" in this chapter.

(p) "Wireless communication services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

**14.62.030 Permit required.**

- (a) A land use permit per LSMC 14.40-I Table of Permissible uses by Zones is required in addition to a building permit for the location, installation or construction of any new wireless communication facility (WCF), and for any modification to an existing WCF that is not governed by Chapter 14.62 Part III LSMC.
- (b) All eligible facility modifications (EFM's) shall require a EFM permit together with applicable building permits per LSMC 14.62 Part III.

Part II. Wireless Communication Towers and Antennas

**14.62.040 Application requirements.**

All applications for a WCF must include, at a minimum:

- (a) A diagram or map showing the primary view shed of the proposed WCF;
- (b) A map showing the coverage area of the proposed WCF at the requested height;
- (c) An explanation of the need for the proposed WCF, including an analysis of alternative sites that supports the selected site over other possible locations, particularly locations in a higher priority zone;
- (d) An inventory of other WCF sites operated by the applicant that are either in the city or within one mile of its borders, including specific information about location, height and design of each facility;
- (e) A site/landscaping plan showing the specific placement of the WCF on the site; showing the location of existing structures, trees and other significant site features; and indicating type and locations of plant materials used to screen WCF components;
- (f) Documentation verifying that the proposed WCF complies with any applicable regulations and specifications in accordance with the Federal Aviation Administration (FAA); and

**14.62.050 Permit conditions.**

Each permit issued by the city shall be conditioned to:

- (a) Require that construction or installation of the WCF must commence within one year from the date of the permit, with opportunity for a one-year extension; otherwise, the permit shall be revoked without further action of the city and the rights and privileges appurtenant to the permit shall be void;
- (b) Require the permittee to allow co-location of proposed WCFs on the permittee's site, unless the permittee establishes to the city's satisfaction that co-location will technically impair the existing permitted use(s) to a substantial degree;

- (c) Require the permittee to maintain the WCF in a state of good repair and to maintain or replace, if necessary, vegetation and landscaping required as a condition of approving the permit;
- (d) Require the permittee to notify the city of any sale, transfer, assignment of a site or WCF within 60 days of such event; and
- (e) Require the permittee to comply with the provisions of this title and all other applicable city ordinances and rules and regulations.

**14.62.060 Permit enforcement.**

The planning and community development director, or designee, shall enforce the provisions of this chapter under the code enforcement provisions of the Lake Stevens Municipal Code.

**14.62.070 Prioritized locations.**

The following sites are prioritized in order of preference for locating proposed WCFs and permits shall be issued so that WCFs will be located on the highest priority site feasible:

- (a) Co-location.
- (b) Public buildings and structures located in nonresidential zones.
- (c) Buildings and structures in business and commercial zoned sites used for industrial, commercial and business uses.
- (d) Buildings and structures in residential zones not used entirely for residential use; provided, that WCFs will not be sited on vacant residential lots.

**14.62.080 Development standards.**

All WCFs shall be constructed or installed per the following development standards:

- (a) WCFs must comply with applicable Federal Communications Commission (FCC), Federal Aviation Administration (FAA), state, and city regulations and standards;
- (b) A freestanding WCF shall not be allowed whenever an existing structure can meet technical and network location requirements;
- (c) No wireless communication tower may be located within 1,000 feet of an existing or previously approved tower.
- (d) No wireless tower may be located within 1,000 feet of the shoreline of Lake Stevens.

- (e) All new towers shall be designed to reasonably accommodate future installation of a second array.
- (f) A new antenna or array placed on an existing structure such as a water tank or building is exempt from a land use permit, provided the new antenna or array extends no higher than 25 feet above the top of the structure to which it is being added.
- (g) Speculative wireless towers are prohibited. As part of the land use permit process, the applicant shall demonstrate that there is a licensed provider of telecommunication services contractually committed to using the proposed pole to provide wireless communication services.
- (h) Antennas shall be located, mounted and designed so that visual and aesthetic impacts upon surrounding land uses and structures are minimized, and so that they blend into the existing environment;
- (i) WCFs must be screened or camouflaged employing the best available technology, such as compatible materials, location, color, artificial trees and hollow flagpoles, and other tactics to minimize visibility of the facility from public streets and residential properties.
- (j) A freestanding WCF shall comply with all required setbacks of the zoning district in which it is located;
- (k) WCF shall be designed and placed or installed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures by:
  - (1) Using existing site features to screen the WCF from prevalent views; and
  - (2) Using existing site features as a background in a way that the WCF blends into the background;
- (l) Screening of the base of the pole, including any security fences and equipment cabinets, shall be done in a manner as to blend into the site so as the screening does not to call undue attention itself.
- (m) A WCF shall be painted either in a nonreflective color or in a color scheme appropriate to the background against which the WCF would be viewed from a majority of points within its viewshed, and in either case the color must be approved by the city as part of permit approval;
- (n) Equipment facilities shall be placed underground if applicable, or, if above ground, shall:
  - (1) Be screened from any street and adjacent property with fencing, walls, landscaping, structures or topography or a combination thereof.

- (2) Unless otherwise required by the Federal Aviation Administration, wireless facility support structures shall be of a neutral color to minimize visibility.
- (o) As a condition of permit approval, the city may require the applicant to supplement existing trees and mature vegetation to screen the facility;
- (p) Should the communications element of a tower be abandoned and cease functioning for a period of one year, the tower shall be removed from the site. At the time of application, a notarized statement from the property owner shall be provided to the City and recorded against the property which affirms that:
  - (1) The signee is the owner; and
  - (2) He or she understands that if the use is abandoned the tower must be removed within one year; and
  - (3) If the City acts to enforce this rule, the property owner, heirs or successors are ultimately responsible for the removal. (Ord. 608, Sec. 3, 1999)
- (q) Security fencing shall:
  - (1) Not exceed six feet in height;
  - (2) Be screened from view using appropriate landscaping materials; and
  - (3) If it is a chain-link fence, be camouflaged with appropriate techniques and painted or coated with a nonreflective color;

**14.62.090 Electromagnetic field (EMF) standards compliance.**

- (a) All WCFs shall be operated in compliance with federal standards for EMF emissions.
- (b) All WCFs shall be operated in a manner that the WCF will not cause localized interference with the reception of area television or radio broadcasts, garage door openers, portable phones and other similar FCC approved devices. If on review of a registered complaint the city finds that the WCF interferes with such reception, the city may revoke or modify the permit. The applicant shall be given a reasonable time based on the nature of the problem to correct the interference. If the permit is revoked, then the facility shall be removed.

**Part III Eligible Facility Modifications (EFM's)**

#### **14.62.100 Purpose**

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

#### **14.62.110 Applicability – Relationship to other rules and regulations.**

- (a) Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and notwithstanding any other provisions in the city code, the provisions of this chapter shall be the sole and exclusive procedure for review and approval of a proposed facilities modification which the applicant asserts is subject to review under Section 6409 (Spectrum Act). To the extent that other provisions of the city code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this chapter shall control. If any part of an application for project permit approval includes a proposed facilities modification, the proposed facilities modification portion of the application shall be reviewed under the provisions of this chapter. If an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409, such proposal shall not be subject to review under this chapter and may be subject to review under other applicable provisions of the city code.
- (b) Nonconforming Structures. This chapter shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming or legal nonconforming structure at the time a completed eligible facilities modification application is filed with the city. To the extent that the nonconforming structures and use provisions of the city code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this chapter and shall not apply.
- (c) Replacement of Eligible Support Structure. This chapter shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of a tower or base station.
- (d) First Deployment – Base Station. This chapter shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within or upon, or attached to, the structure.

(e) Interpretation. Interpretations of this chapter shall be guided by Section 6409; the FCC eligible facilities request rules, the FCC's Report and Order, in regards to Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153.

(f) SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible facilities modification application are not subject to, and are exempt from, the requirements of RCW [43.21C.030](#)(2)(c), if:

- (1) The proposed facilities modification would not increase the height of the eligible support structure by more than 10 percent, or 20 feet, whichever is greater; or
- (2) The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the structure more than 20 feet, or more than the width of the structure at the level of the appurtenance, whichever is greater;\* or
- (3) The authority to condition or deny an application pursuant to Chapter [43.21C](#) RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.

\*Note: See RCW [43.21C.0384](#) and WAC [197-11-800](#)(25).

(g) Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the city's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

#### **14.62.120 Application submittal requirements – Determination of completeness.**

(a) Purpose. This section sets forth the submittal requirements for an eligible facilities modification application ("EFM application"). The purpose of the submittal requirements is to ensure that the city has all information and documentation that is reasonably necessary to determine if the applicant's proposed facilities modification will substantially change the physical dimensions of an eligible support structure. The submittal requirements are not intended to require the applicant to establish the need for the proposed modifications or to justify the business decision to propose such modifications.

(b) Submittal Requirements. No EFM application shall be deemed complete unless it is in writing; accompanied by the applicable application and review fee; includes the required submittals; and attested to by the authorized person certifying the truth and accuracy of the information provided in the

application. The application shall include the following submittals, unless waived by the approval authority:

- (1) The following contact information for the authorized person:
  - (i) Name;
  - (ii) Title;
  - (iii) Mailing address;
  - (iv) Phone number; and
  - (v) E-mail address (optional);
- (2) The following contact information for the applicant:
  - (i) Legal and dba names, and if applicable, all states of incorporation;
  - (ii) Mailing address;
  - (iii) Contact phone number(s);
  - (iv) Washington State tax identification number;
  - (v) The name and address of applicant's registered agent; and
  - (vi) The names and home addresses of all principals or managing members if applicant is a noncorporate entity, such as a partnership or limited liability company;
- (3) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act;
- (4) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by [47 C.F.R. Part 1](#) (Part 1 – Practice and Procedure), Section 1.1307, as amended, or, in the event that an FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment;
- (5) If the applicant is not the owner or person in control of the eligible support structure and/or site: An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facilities modification. If the eligible support structure is located in a public right-of-way, the applicant must also attest that applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right-of-way;
- (6) If the applicant proposes a modification that will result in an increase in height of the eligible support structure: Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure (a) as originally constructed and granted approval by the city or other

applicable local zoning or similar regulatory authority; or (b) as of the most recent modification received by the city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater;

(7) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to preexisting restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the city code, or an ordinance or a municipal code of another local government authority: A copy of the document (e.g., CUP) setting forth such preexisting restrictions or requirements together with a certification that the proposed facilities modification conforms to such restrictions or requirements; provided, that such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure;

(8) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to preexisting concealment restrictions or requirements, or was constructed with concealment elements: Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure;

(9) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure: Record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification;

(10) If the applicant proposes a modification to an eligible support structure that will (a) include any excavation; (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower; or (c) would protrude from the edge of a non-tower eligible support structure: A description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation and dimensions of the new or replacement transmission equipment. The city may require a survey by a land surveyor licensed in the state of Washington

when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure;

(11) If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement: A technical report by a qualified engineer accredited by the state of Washington, demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed co-location, removal, or replacement of transmission equipment and conforms to applicable code requirements. The city may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of necessity;

(12) If the applicant proposes a modification to a tower: A stamped report by a Washington State-registered professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation, EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:

- (i) The number and type of antennas that can be accommodated;
- (ii) The basis for the calculation of capacity; and
- (iii) A written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standards.

The city may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance;

(13) If the applicant proposes a modification to a base station: A stamped report by a Washington State-registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes;

(14) If the applicant proposes a modification requiring alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site: A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting:

- (i) The location, elevation and dimensions of the existing eligible support structure;
- (ii) The location, elevation and dimensions of the existing transmission equipment;
- (iii) The location, elevation and dimensions of the transmission equipment, if any, proposed to be co-located or that will replace existing transmission equipment;
- (iv) The location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each;
- (v) Any proposed modification to the eligible support structure;
- (vi) The location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
- (vii) The location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

(c) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the substantial change criteria. A waiver, to be effective, must be in writing and signed by the approval authority.

(d) When Received. An EFM application, and any supplemental submittals, shall be deemed received by the city upon the date such application or supplemental submittal is filed with the planning and community development department. An application, and any supplemental submittals, must be filed in person during regular business hours of the city and must be accompanied by the applicable permit review fee(s). Any application received by the city without contemporaneous payment, or deposit, of the applicable permit review fees will be rejected.

**14.62.130 Completed Application – Determination – Tolling.**

(a) Determination of Completeness. The approval authority shall, within 30 days of receipt of the application, review the application for completeness. An EFM application is complete if it includes the applicable permit review fee(s) and contains all the applicable submittal requirements set forth at LSCM 14.62.120 (b), unless waived by the approval authority pursuant to LSCM 14.62.120 (c). The determination of completeness shall not preclude the approval authority from requesting additional information or studies either at the time of the determination of completeness or subsequently if new

or additional information is required, or substantial changes in the proposed action occur, or the proposed facilities modification is modified by applicant, as determined by the approval authority.

(b) Incomplete Application. The approval authority shall notify the applicant within 30 days of receipt of the application that the application is incomplete. Such notice shall clearly and specifically delineate all missing documents or information.

(c) Timeframe for Review. Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, [jurisdiction] shall approve the application unless it determines that the application is not covered by this Chapter.

(d) Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by the City of Lake Stevens and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (4) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(e) Interaction with Section 332(c)(7). If the City determines that the applicant's request is not covered by Section 6409(a) as delineated under this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under Section 332(c)(7), pursuant to the limitations applicable to other Section 332(c)(7) reviews.

(f) Failure to Act. In the event the City fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(g) Remedies. Applicants and the City may bring claims related to Section 6409(a) to any court of competent jurisdiction.

**14.62.140 Substantial change criteria.**

A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the following criteria:

(a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater;

(b) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

(c) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(d) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure; and:

- (1) It entails any excavation or deployment outside the current site;
- (2) It would defeat the concealment elements of the eligible support structure; or
- (3) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

**Part IV. Small Cell Facilities**

**Future Regulations**