



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: April 20, 2015
Jurisdiction: City of Gresham
Local file no.: CPA 15-033
DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 04/17/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 42 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

 DEPT OF
 FOR DLCD USE

File No.: APR 17 2015

 Received
 LAND CONSERVATION
 AND DEVELOPMENT

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Gresham

Local file no.: **CPA 15-033**

Date of adoption: 4/7/2015

Date sent: 4/15/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 2/5/15

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No
 If yes, describe how the adoption differs from the proposal:

Added clarification language to reflect that Wireless Communication Facility Towers (not entire facility) must be located at least 200 feet from a residence.

Local contact (name and title): Ann M. Pytynia, Principal Urban Planner

Phone: 503.618.2859

E-mail: Ann.Pytynia@GreshamOregon.gov

Street address: 1333 NW Eastman Parkway

City: Gresham

Zip: 97030-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

Development Code Sections 8.0100-Special Uses and 10.0600-WCF Co-location Standards; Goals 1 and 2

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Development Code Sections 8.0100-Special Uses and 10.0600-WCF Co-location Standards

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

Commentary is for information only.
Proposed new language is double-underlined;
Proposed deleted language is ~~stricken~~.

CB 07-15

ORDINANCE NO. 1751

AN ORDINANCE AMENDING VOLUME 3, GRESHAM COMMUNITY DEVELOPMENT CODE AS IT RELATES TO FEDERAL COMMUNICATION COMMISSION RULES REGULATING WIRELESS COMMUNICATION FACILITY SITING AND DECLARING AN EMERGENCY AND PROVIDING FOR ENACTMENT IN ONE READING TO BE EFFECTIVE IMMEDIATELY

THE CITY OF GRESHAM DOES ORDAIN AS FOLLOWS:

Section 1. Volume 3, Development Code, Section 8.0122, is amended as follows:

PROPOSED AMENDMENT	Commentary
<p>8.0122 Wireless Communications Facilities * * * * *</p> <p>C. For all wireless communication facility proposals, the facility <u>tower</u> shall be located at least 200 feet from the nearest residence and must be constructed to allow co-location of additional antenna facilities.</p> <p>D. Wireless communication facilities are exempt from floor area ratio and maximum setback requirements.</p> <p>E. <u>i. All wireless communication facility proposals for personal wireless services shall be subject to the requirements and limitations of 47 U.S.C. 332(c)(7), Preservation of Local Zoning Authority, and the rules adopted by the Federal Communications Commission to implement said section.</u> <u>ii. All wireless communication facility proposals shall be subject to the requirements and limitations of 47 U.S.C. 1455(a), Facility Modifications, and the rules adopted by the Federal Communications Commission to implement said section.</u> <u>iii. In the event of any apparent conflict or inconsistency between the applicable federal laws or rules and Section 8.0103, Section 8.0122, Section 10.601 or Section 10.0602, the applicability, and where required, the application of the provisions of federal laws and rules shall be determined as part of the Special Use Review process.</u></p>	<p><i>The word "tower" has been inserted to clarify the intent of this section, which is to have a separation of at least 200' from a WCF tower – not all elements of a wireless facility (such as an equipment shed).</i></p> <p><i>All of the following changes are proposed in order to ensure that the Development Code remains in compliance with Federal Communications Commission rules that will go into effect on April 8, 2015. The staff report that accompanies this Council Bill details the required changes.</i></p>
<p>* * * * *</p>	

Section 2. Volume 3, Development Code, Article 10, Section 10.0600, is amended as follows:

PROPOSED AMENDMENT	<i>Commentary</i>
<p style="text-align: center;">* * * * *</p> <p>10.0601 Co-Location Standards</p> <p style="text-align: center;">* * * * *</p> <p><u>C. i. All wireless communication facility co-location proposals for personal wireless services shall be subject to the requirements and limitations of 47 U.S.C. 332(c)(7) and the rules adopted by the Federal Communications Commission to implement said section.</u></p> <p><u>ii. All wireless communication facility co-location proposals shall be subject to the requirements and limitations of 47 U.S.C. 1455(a) and the rules adopted by the Federal Communications Commission to implement said section.</u></p> <p><u>iii. In the event the applicable federal laws or rules conflict with Section 10.601, the provisions of the applicable federal laws and rules shall apply.</u></p>	
<p><u>10.0602 Request to Modify an Existing and Eligible Wireless Communication Facility</u></p> <p><u>Notwithstanding Section 8.0103, Section 8.0122 or Section 10.0601, the modification of a wireless communication facility that is an “eligible facility” shall be subject to the following:</u></p> <p>A. <u>Terms as used in Section 10.0602 shall have the meanings provided by 47 U.S.C. 1455(a) and the rules adopted by the Federal Communications Commission to implement said section (Mandatory Approval Provisions).</u></p> <p>B. <u>The Manager shall comply with the completeness process, review process and timelines as provided by the Mandatory Approval Provisions.1455(a).</u></p> <p>C. <u>As required by 47 U.S.C. 1455(a), the Manager may not deny and shall approve an eligible facility request for a modification of an existing wireless tower or base station that meets the requirements of the Mandatory Approval Provisions.. Notwithstanding the foregoing, the Manager may place conditions on the grant of an eligible facility request, provided that those conditions are consistent with the requirements of the Mandatory Approval Provisions.</u></p> <p>D. <u>Any 47 U.S.C. 1455(a) application that the City grants, whether by City action or by operation of FCC rule or federal law, shall be subject to the condition that the applicant comply with:</u></p>	

<ul style="list-style-type: none"> (i) <u>The camouflage requirements in the City of Gresham Community Development Code or in the original approval of the existing tower or base station;</u> (ii) <u>The applicable provisions of the codes adopted and enforced pursuant to GRC Article 10.05.</u> (iii) <u>Any other generally applicable City laws reasonably related to health and safety.</u> <p>E. <u>Any application that is deemed granted by reason of the City's failure to act within the applicable time periods provided in federal law:</u></p> <ul style="list-style-type: none"> (i) <u>Shall not be deemed granted until the Applicant provides notice to the City, in writing, that the application has been deemed granted after the applicable time period has expired; and</u> (ii) <u>Shall be subject to all requirements in Section 10.0602(D).</u> 	
* * * * *	

Section 3. Emergency Clause and Effective Date. The City Council finds that these amendments are required due to amendments to Federal Communications Commission rules regulating wireless communication facilities siting which will be effective on April 8, 2015. The proposed changes to the code must be put into effect immediately to ensure the code is in compliance with the FCC rule changes and, therefore, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon first reading.

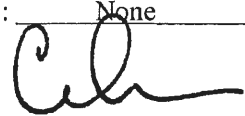
First reading and passed: April 7, 2015

Yes: Hinton, Echols, French, McCormick, Stegmann

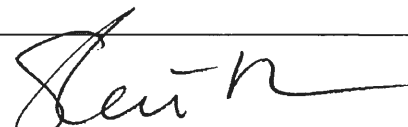
No: Palmero

Absent: Bemis

Abstain: None

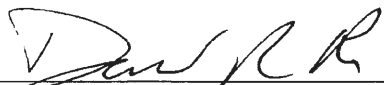


Erik Kvarsten
City Manager



Shane T. Bemis
Mayor

Approved as to Form:



David R. Ris
City Attorney

BEFORE THE CITY COUNCIL OF THE
CITY OF GRESHAM

IN THE MATTER OF AMENDMENTS TO VOLUME 3,) Order No. 655
DEVELOPMENT CODE, OF THE GRESHAM)
COMMUNITY DEVELOPMENT PLAN, REGARDING) CPA 15-033
FEDERAL COMMUNICATION COMMISSION RULES)
REGULATING WIRELESS COMMUNICATION)
FACILITY SITING)

On April 7, 2015, the City Council held a public hearing to take testimony on amendments to Volume 3, Development Code, of the Gresham Community Development Plan, regarding Federal Communication Commission rules regarding wireless communication facility siting.

The hearing was conducted under Type IV procedures. Mayor Shane T. Bemis presided at the hearing.

The Council closed the public hearing and approved the proposed amendments, and a decision was made at the April 7, 2015 meeting.

The Council orders that these amendments are approved, and adopts the findings, conclusions, and recommendations as stated in the attached Planning Commission Recommendation Order and staff report.

A permanent record of this proceeding is to be kept on file in the Gresham City Hall, along with the original of the Order.

Dated: April 7, 2015



City Manager



Mayor

BEFORE THE PLANNING COMMISSION OF THE
CITY OF GRESHAM

TYPE IV RECOMMENDATION ORDER

CPA 15-033


A Type IV Legislative Public Hearing was held on March 23, 2015, to consider proposed amendments to the Volume 3, Development Code, of the Gresham Community Development Plan related to Wireless Communication Facilities and Federal Communications Commission regulations.

The Planning Commission closed the public hearing and made a final recommendation at the March 23, 2015 meeting.

Richard Anderson, Chair, presided at the hearing.

A permanent record of this proceeding is to be kept on file in the Gresham City Hall, along with the original of this Type IV Recommendation Order.

The Planning Commission recommends **Adoption** of the proposed Development Code amendments regarding Wireless Communication Facilities to the City Council based on the findings, conclusions and recommendations of the Staff Report.



Chairperson

March 23, 2015
Date



MEMORANDUM

Urban Design & Planning

**STAFF REPORT
TYPE IV HEARING—COMPREHENSIVE PLAN AMENDMENT
WIRELESS COMMUNICATION FACILITIES**

To: Gresham Planning Commission

From: David Berniker, Director, Urban Design & Planning
Ann Pytynia, Principal Urban Planner, Urban Design & Planning

Hearing Date: March 23, 2015

Report Date: March 12, 2015

File: CPA 15-033

Proposal: To adopt comprehensive plan amendments to Volume 3 (Development Code) of the Community Development Plan that:

- a. Reflect a change to Section 8.0221.C clarifying that wireless communication facility towers must be at least 200' from a residence.
- b. Includes language that reflects the requirements of the Federal Communications Commission regarding Wireless Communication Facilities (WCFs). Rules regarding the mandatory approval of certain eligible facilities will go into effect on April 8, 2015 and will preempt inconsistent City regulations.

Exhibits: 'A' – Proposed Text Amendments

Recommendation: Staff recommends **adoption** of the proposed comprehensive plan amendments.

SECTION I EXECUTIVE SUMMARY

The proposed changes are meant to ensure that the Development Code complies with Federal Communications Commission (FCC) rules regarding the siting of WCFs.

Amendments to Volume 3 (Development Code) are proposed that:

- Provide clarity regarding the intent of language requiring a minimum separation between WCF towers and residences.
- Ensure that the City Code reflects the federal requirement that the municipal regulation of the placement, construction, and modification of personal wireless service facilities not unreasonably discriminate among WCF providers nor prohibit or have the effect of prohibiting the provision of personal wireless services. This is referred to as the “barrier to entry” analysis.
- Include language that reflects recent FCC rulemaking that mandates approval of and establishes deadlines for the issuance of decisions regarding certain modifications to communication facilities such as public safety communication towers, broadcast towers and cell towers. These new FCC rules go into effect on April 8, 2015 and will preempt any inconsistent local regulations. Subject to Planning Commission input, staff intends to recommend the emergency enactment of the new regulations at the April 7, 2015 City Council meeting.

Notice of the Development Code changes were sent to the Department of Land Conservation and Development (DLCD) and Metro on February 5, 2015; complying with the requirement to provide such notice at least 45 days before the first hearing. Notice of the March 23, 2015 Planning Commission hearing was published in the Gresham Outlook on March 10, 2015. Notice of the April 7, 2015 City Council hearing will be published in the Gresham Outlook no later than March 27, 2015.

Proposed Comprehensive Plan Amendments Overview

Text changes to the Community Development Plan are proposed. The format of the attached Exhibit ‘A’ is a ~~strikeout~~/underline. The overview provided below summarizes the changes.

Volume 3 - Development Code

The following amendments are proposed and apply to new WCFs, modifications to existing WCFs and colocations using existing WCFs:

- An amendment to **Section 8.0122.C** indicating that the WCF *tower*, not all associated elements of a WCF, need to be located at least 200’ from a residence.
- The addition of a new standard under the Special Use Review section of the Code, **8.0122.E** to **Section 8.0122 Wireless Communications Facilities**:
- The addition of a new standard, **10.0601.C** to **Section 10.0601 Co-Location Standards**.
- A new section **10.0602 Request to Modify an Existing and Eligible Wireless Communication Facility**

The proposed changes will:

- A. Clarify that only the WCF tower needs to be at least 200' from a residence. The current language in **Section 8.0122.C** states that:

For all wireless communication facility proposals, the facility shall be located at least 200 feet from the nearest residence and must be constructed to allow co-location of additional antenna facilities.

The noted language can be misconstrued to mean that the entire facility (including equipment shelters and other accessory structures) are required to be separated a minimum of 200' from a residence. This was not the intent. Since the sentence also refers to the co-location of additional antenna facilities, this language was meant to refer to only the tower component of the WCF. The revised language will clarify that only the tower itself needs to be a minimum of 200' from a residence.

- B. Add additional standards reflecting the requirements of 47 U.S.C 332(c)(7) that will:

1. Disallow unreasonable discrimination among WCF providers of functionally equivalent services.

2. Clarify the FCC "barrier to entry" analysis required for the siting of personal wireless service facilities (cell towers). A prohibition of these WCFs would be considered a barrier to entry, but the city may regulate placement by adopting reasonable standards. The barrier to entry analysis is done as part of the Special Use Review.

3. Disallows the regulation of WCFs on the basis of environmental effects if the WCF complies with the FCC regulations regarding these effects.

4. Establishes the requirement to act upon applications for personal wireless service facilities within a reasonable period of time from submittal unless there is a mutual agreement to a time extension or the locality informs the applicant within 30 days of submittal that the application is incomplete. The FCC has determined that a "reasonable period of time" is 90 days for a colocation and 150 days for other applications. The FCC has further defined "colocation" as an antennas structure that places an antenna on a structure and does not involve a **substantial increase in size**.¹

- C. Incorporate changes into the Code that reflect 47 U.S.C 1455(a), and also known as Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, and the related FCC rules that go into effect on April 8, 2015. These changes state that the City may not deny and must approve any modifications that do not "**substantially change**" (defined below) the physical dimensions of an existing approved wireless tower or base station.² The term "**substantially change**" used in this section is similar to, but not identical with, the term "**substantial increase in size**" as used in the previous section. The rules cover any FCC authorized wireless communication service (not limited to cell towers) and will:

¹ "**Substantial increase in size**" means the application does not:

- Exceed the height of existing support structures that are located in the right-of-way within the vicinity of the proposed construction by more than 10% or twenty feet, whichever is greater;
- Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;
- Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater; or
- Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

² An existing base station includes the structure that supports or houses an antenna, transceiver, or other associated equipment.

1. Require the approval within 60 days of submittal of the application to modify a WCF unless there is a mutual agreement to a time extension or the locality informs the applicant within 30 days of submittal that the application is incomplete.
2. Limit incompleteness determinations to requiring more information documenting that the application is covered by Section 6409(a).
3. Mandate that the application is deemed approved if a jurisdiction violates the provision of these rules.

The term “**substantially change**” is defined as:

A. For towers and base stations outside of the Right-of-Way:

- An increase in tower height of more than 10% or by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater;
- The appurtenance protrudes 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.

B. For towers and base stations in the Right of Way:

- For towers and base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
- For towers and base stations, it protrudes from the edge of the structure more than 6 feet.

C. For all towers and base stations:

- The alteration involves the installation of more equipment cabinets than needed by the technology, but not to exceed four.
- The change entails any excavation outside of the current site or base station.³
- The alteration would defeat the existing concealment/camouflage elements of the tower or base station.
- The change would not comply with the conditions imposed as part of the prior land use approval unless such non-compliance is due to an increase in height, width, addition of cabinets or new excavation that does not exceed the noted substantial change thresholds.

Staff Report Organization

- Sections II and III identify those current Community Development Plan procedures and policies that apply to the proposal.
- Section IV identifies the applicable Metro Urban Growth Management Functional Plan (UGMFP) titles that apply to the proposal.
- Section V identifies the applicable Oregon Statewide Goals that apply to the proposal.
- Section VI contains specific findings of fact that detail how the proposal is consistent with Sections II through V:
 - Subsection A is findings of fact for the Community Development Plan procedures.

³ For towers outside the ROW, the site is the boundary of the leased property or owned property surrounding the tower and any access or utility easements related to the site. For other towers, the site is that area in proximity to the structure and to other transmission equipment already deployed on the ground.

- Subsection B is findings of fact for the Community Development Plan policies.
- Subsection C is findings of fact for the UGMFP titles.
- Subsection D is findings of fact for the Statewide Planning Goals.
- Sections VII and VIII summarize staff conclusions and recommendations.
- Exhibit 'A' includes proposed amendments to Volume 3 (Development Code).

**SECTION II
APPLICABLE COMMUNITY DEVELOPMENT CODE PROCEDURES**

Section 11.0201	Initiation of an Application
Section 11.0203	Classification of Applications by Procedure
Section 11.0204	Review Authorities
Section 11.0600	Type IV Legislative Procedures
Section 11.1000	Public Hearings

**SECTION III
APPLICABLE COMMUNITY DEVELOPMENT PLAN GOALS & POLICIES**

Section 10.014	Land Use Policies and Regulations
Section 10.100	Citizen Involvement

**SECTION IV
APPLICABLE METRO URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN TITLES**

Title 8	Compliance Procedures
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**SECTION V
APPLICABLE OREGON STATEWIDE PLANNING GOALS**

Goal 1	Citizen Involvement
Goal 2	Land Use Planning

**SECTION VI
FINDINGS OF FACT**

The proposed Community Development Plan amendments attached as Exhibit 'A' are consistent with all applicable procedures, goals and policies of the Community Development Plan, applicable titles of the Metro Urban Growth Management Functional Plan, and applicable Statewide Planning Goals as indicated in the following findings.

A. Community Development Code Procedures

1. Section 11.0201 – Initiation. This section provides that only the City Council may initiate a Type IV legislative application to amend the text of the Map or Code of the Gresham Community Development Plan. This project is required due to recent changes in federal law that preempt inconsistent city codes effective April 8, 2015. City Council will review these amendments at a hearing on April 7, 2015.

2. Sections 11.0203 and 11.0204 – Classification of Applications and Review Authorities. These sections provide that Type IV procedures are legislative and typically involve the adoption, implementation or amendment of policy by ordinance and that it generally applies to a relatively large geographic area containing many property

owners. They also provide that the Planning Commission provide a recommendation on the amendments and the City Council be the decision-making authority. This project meets those conditions, is being processed under the Type IV procedures and will be heard by the City Council.

3. Section 11.0600 – Type IV Legislative Procedures. For a Type IV Comprehensive Plan Amendment this section requires a submittal to the DLCDC at least 35 days and to Metro at least 45 days prior to the Planning Commission hearing. This submittal was made on February 5, 2015, which is at least 45 days prior to the Planning Commission hearing date of March 23, 2015. This section also requires that hearings be scheduled, a notice published in a newspaper of general circulation in the City and a copy of the decision be mailed to those required to receive such notice. Required notice of public hearing for these proposed text amendments has been published in the *Gresham Outlook* as required by this section.

This section also requires that the Planning Commission shall hold a public hearing and make a recommendation to the Council for an amendment to the Community Development Code and the Community Development Plan. The Council shall hold another public hearing and make a final decision. Interested persons may present evidence and testimony relevant to the proposal. The Planning Commission will make a recommendation and the Council will make a decision that will be based on findings of fact contained in this report and in the hearings record, and a decision will be sent to those who participated in the hearings. A decision shall be made accompanied by findings and an order.

4. Section 11.1000 - Public Hearings. This section provides for a hearing process consistent with Section 11.1000. Both the Planning Commission and the City Council, at public hearings in conformance with provisions of this section, will consider this proposal.

B. Community Development Plan Goals and Policies (Volume II)

This section identifies the applicable Community Development Plan goals and policies. The text (*italicized*) of the policy is followed by corresponding findings and conclusions.

Section 10.014 Land Use Policies and Regulations

Goal: Maintain an up-to-date Comprehensive Plan and implementing regulations as the legislative foundation of Gresham's land use program.

Policy 20: The City shall periodically review and update the Comprehensive Plan text and the Community Development Plan maps to ensure they remain current and responsive to the needs of the community needs; provide reliable information and dependable, factually based policy direction, and conform to applicable state law, administrative rules, and regional requirements.

Policy 23: Gresham shall coordinate the development, adoption and amendment of its land use related goals, policies and implementing measures with other affected jurisdictions, agencies and special districts.

Action Measure 11: Revise the Comprehensive Plan Text, Map and related findings as needed to maintain its reliability and timelines to ensure consistency among goals, policies, implementing measures; accuracy of findings and compliance with regional, state and federal laws and rules. This includes review by the Planning Commission every two years; a formal evaluation every five years, and an overall update every ten years.

Action Measure 13: Monitor actions, programs and policies of federal, state, and regional governments and when appropriate, amend the Comprehensive Plan to be consistent with new laws and administrative rules.

Findings

The proposed amendments are being implemented to reflect revised rules prescribed by the Federal Communications Commission. These rules will take effect on April 8, 2015 and will preempt inconsistent regulations regarding the siting of WCFs. The proposed changes will allow for the City to process applications in compliance with these changes to federal law.

Conclusion

Policies 20 and 23 and Action Measures 11 and 13 are addressed because they state that city codes should reflect policy direction and remain current with applicable laws; and also that the City needs to coordinate the implementation of land use measures with affected governmental agencies.

The proposal is consistent with the applicable general goals, policies and action measures listed in this section.

Section 10.100 - Citizen Involvement

Goal: The City shall provide opportunities for citizens to participate in all phases of the planning process by coordinating citizen involvement functions; effectively communicating information; and facilitating opportunities for input.

Policy 1: The City shall ensure the opportunity for citizen participation and input when preparing and revising policies, plans and implementing regulations.

Policy 5: The City shall keep citizens informed of issues confronting the City.

Findings

The public involvement goals and policies establish the City's intent that its citizens have meaningful opportunities throughout a planning project to be informed and to affect proposals. Public participation opportunities included:

- A meeting with the Neighborhood Coalition President on February 12, 2015.
- Public Notice was posted in the Gresham Outlook for both the March 23, 2015 Planning Commission hearing and the April 7, 2015 City Council hearing.

Conclusion

The *Citizen Involvement Goal (10.100)* and related policies were addressed through public notice and presentations at the Planning Commission and the City Council. The proposal is consistent with the applicable citizen involvement goals and policies listed in this section.

C. Metro Urban Growth Management Functional Plan

Title 8 Compliance Procedures

Findings

Section 3.07.820 of this title requires that at least 45 days prior to the first evidentiary hearing on an amendment to a comprehensive plan or land use regulation that the City submit the proposed amendments to Metro. Metro may review the amendments and can request that the City provide an analysis of compliance with the Functional Plan.

The City submitted the proposed amendments to Metro on February 5, 2015, which was at least 45 days prior to the first evidentiary hearing of March 23, 2015. Metro has not contacted the City regarding this notice.

Conclusion

The City has submitted the proposed amendments to Metro at least 45 day prior to the first evidentiary hearing. The proposal is consistent with Title 8.

D. Oregon Statewide Planning Goals

Findings

Statewide Planning Goal 1 requires that cities “insure the opportunity for citizens to be involved in all phases of the planning process.”

Statewide Planning Goal 2 requires cities to “establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. This shall result in land use plans and implementation measures that are consistent with the land use plans.”

A public input process was provided through the published notices posted in the Gresham Outlook in advance of both the Planning Commission and City Council hearings.

The City has a state-acknowledged Comprehensive Plan. Section VI of this report describes findings and conclusions that the proposed Comprehensive Plan Amendments are consistent with applicable procedures and applicable goals and policies of the City’s Comprehensive Plan.

Conclusion

The proposed amendments comply with Statewide Planning Goals 1 and 2. DLCDC has not contacted the City regarding the notice for these amendments.

SECTION VII CONCLUSION

The proposed comprehensive plan amendments attached as Exhibit ‘A’ is consistent with applicable criteria and policies of the Community Development Plan, the applicable development code of the Community Development Plan; Applicable Metro UGMFP titles and the applicable Oregon Statewide Planning Goals; as indicated by findings contained or referenced in Section VI of this report.

SECTION VIII RECOMMENDATION

Staff recommends **adoption** of the proposed comprehensive plan amendments as contained in the attached Exhibit ‘A’.

End of Staff Report

IMPORTANT MATERIAL ATTACHED
GRESHAM COMMUNITY DEVELOPMENT PLAN UPDATES

**Replacement Pages for Volume 3, Development Code,
Regarding Wireless Communication Facilities and FCC Regulations
Effective April 7, 2015 6:30 PM**

UDP

David Berniker
File Review Desk (HF)
POD desk (TR)
Ricardo Banuelos -2
Stacy Humphrey
Brian Martin
Ken Onyima
Tina Osterink
Mary Phillips
Ann Pytynia
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Ken Koblitz
Colin Stout (email notification)
Wendy Marshall (email notification)

EDS

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UR

Emily Hull

CAO

David Ris
David Ross
CAO Library/Ashley Berman

FES

Fire Marshal's Office copy

OGM

ONCE (L. Sizmin)
City Manager's Office Copy
Council Record Copy (T. Hall)

Others

DLCD – Salem
Design Commission
Planning Commission
Hearings Officer

The Development Code is also kept current and available on the City's web site:

<http://greshamoregon.gov/developmentcode/>

Questions? Contact Tammy Richardson @ tammy.richardson@greshamoregon.gov



City of Gresham
Urban Design & Planning
1333 NW Eastman Parkway
Gresham OR 97030

**DEVELOPMENT CODE Update Replacement Instructions – April 8, 2015
Wireless Communication Facilities and FCC Regulations**

⇒ **VOLUME 3 – DEVELOPMENT CODE Replacement Pages**

Replace Table of Contents **pages 15 & 16 and 19 & 20** with attached **pages 15 & 16 and 19 & 20**

Replace the following:

Section 8.0100

- Existing pages [8.01]-7 through [8.01]-12 with attached pages [8.01]-7 through [8.01]-14

Section 10.0600

- Existing pages [10.06]-1 & 2 with attached pages [10.06]-1 & 2

If you have questions about your Volume 3 replace pages or no longer wish to maintain a paper copy, please contact Tammy Richardson at extension 2401; or email: tammy.richardson@GreshamOregon.gov

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- A. For all school types, portable classrooms are exempt from floor area ratio, maximum setback requirements, and are not subject to a Special Use Review. They must still obtain a building permit.

8.0120 Heliports

In addition to the standards in **Section 8.0103**, the following apply to Heliports where they are allowed through the Type II Special Use Review procedure:

- A. Helicopter landing facilities are exempt from floor area ratio and maximum setback requirements.
- B. The applicant shall provide an acoustical and mitigation plan report that details the design and measures to be taken which will minimize noise impacts to noise sensitive units as defined in Article 7.20. Noise Control Code of the Gresham Revised Code. The report, at a minimum, shall discuss and make recommendations for:
 - 1. Best management practices concerning preferred approach/departure flight paths;
 - 2. Preferred approach/departure path slopes;
 - 3. Preferred approach/departure air speeds;
 - 4. Preferred times of use;
 - 5. Nearby existing natural flight corridors such as freeways and industrial areas that the helicopter landing facility may utilize; and
 - 6. Other relevant factors.

The plan must include a discussion of the existing physical factors, such as topography and proposed physical barriers such as walls, fences, structures or vegetation, and how these factors would be used to reduce noise impacts. The report shall be prepared by a professional consultant experienced in airport noise evaluation and federal and state airport noise standards.

The report shall include the proposed hours of operation; the number, type and size of aircraft to be located at or expected to use the site; maximum number of helicopter trips on a daily, weekly and annual basis, and the purpose of the helicopter trips and an approach/departure flight path plan showing proposed flight path locations, widths, lengths and slopes.

- C. The applicant shall demonstrate that an application has been made to the Oregon Department of Transportation, Aeronautics Section, by submitting a copy of the helicopter application made to OAD which identifies the following: direction, angles, and number of approaches; helipad size and surface; nearby obstructions; lighting and markings; tie-downs; number of trips; location; and fencing.
- D. Minor or emergency repairs and routine maintenance are allowed in all districts.
- E. All storage and repair shall be conducted in enclosed buildings.
- F. All take-off, landing, and parking areas shall be surfaced with a dust proof and gravel free material.
- G. Setbacks. A setback distance of 200 feet shall be required for landing and take-off pads and refueling facilities from abutting Residential Development Districts, Mixed-Use Development Districts and NC District property lines. A setback distance of 50 feet shall be required for landing and take-off areas and refueling facilities from all other abutting property lines. All setback distances will be measured from the edge of the landing pad. This provision does not apply to landing and take-off pads located on top of a building. Other site improvements shall be consistent with the applicable setback yard provisions of the underlying district.
- H. Buffer and Screening. A 20 foot wide landscaped buffer and screening area shall be provided around the landing and take-off pads and refueling facilities. Landscape plantings shall be consistent with the vegetative requirements of the 'C' buffer of **Section 9.0100**. This requirement is

in addition to any buffering and screening required by **Section 9.0100** of the Community Development Code. The trees must be located so as to not encroach into an 8 (horizontal) to 1 (vertical) flight path from the landing pad in all directions. This provision does not apply to a helicopter landing facility on top of a building.

- I. Prior to occupancy of an approved helicopter landing facility, the applicant must submit a copy of the Oregon Department of Transportation Aeronautics Section heliport application approval.

8.0121 Major Basic Utilities

In addition to the standards in **Section 8.0103**, the following apply to major basic utilities where they are allowed through the Type II Special Use Review procedure:

- A. Basic utilities are exempt from floor area ratio and maximum setback requirements.
- B. Electrical generating facilities are subject to a Type III Special Use Review procedure.
- C. Sewage treatment plants shall not be located in or adjacent to residentially designated land.

8.0122 Wireless Communications Facilities

In addition to the standards in **Section 8.0103**, the following apply to wireless communications facilities where they are allowed through the Type II Special Use Review procedure. Additionally, the following standards apply to co-located facilities that cannot meet the standards in **Section 10.0600**.

- A. An applicant for a wireless communications facility that includes a WCF tower must co-locate on an existing WCF tower or other facility, unless it can be reasonably demonstrated that such is not feasible, in which case the new WCF tower shall be grouped at the same site or be located no closer than 2,000 linear feet from another WCF tower.
- B. No wireless communication facility shall be located within the LDR-5, LDR-7, TLDR, TR, DRL-1, DLR-2, LDR-PV, MDR-PV, HDR-PV, VLDR-SW, LDR-SW and THR-SW districts unless such location is absolutely necessary for the maintenance of wireless communications within that service area.
- C. For all wireless communication facility proposals, the tower shall be located at least 200 feet from the nearest residence and must be constructed to allow co-location of additional antenna facilities.
- D. Wireless communications facilities are exempt from floor area ratio and maximum setback requirements.
- E.
 - 1. All wireless communication facility proposals for personal wireless services shall be subject to the requirements and limitations of 47 U.S.C. 332(c)(7), Preservation of Local Zoning Authority, and the rules adopted by the Federal Communications Commission to implement said section.
 - 2. All wireless communication facility proposals shall be subject to the requirements and limitations of 47 U.S.C. 1455(a), Facility Modifications, and the rules adopted by the Federal Communications Commission to implement said section.
 - 3. In the event of any apparent conflict or inconsistency between the applicable federal laws or rules and **Section 8.0103**, **Section 8.0122**, **Section 10.0601** or **Section 10.0602**, the applicability, and where required, the application of the provisions of federal laws and rules shall be determined as part of the Special Use Review process.

8.0123 Solar Energy Systems

In addition to the standards in **Section 8.0103**, the following apply to solar energy systems where they are allowed through the Type II Special Use Review procedure:

- A. Renewable energy systems shall not be located on prominent building façade sections or on any facades or roof visible from the street of any listed landmark in **Table 5.0330** Historic and Cultural Landmarks List, and shall comply with **Section 5.0321**.
- B. Historic materials and architectural features shall not be removed or damaged with the installation of renewable energy systems per **Section 5.0321** and **Section 5.0323**.
- C. Visual Impact: In order to determine a potential adverse visual impact, the following shall be considered:
 - 1. The extent to which the system is visible from the impacted location;
 - 2. The type, number, height and proximity of existing structures;
 - 3. The amount of vegetated screening;
 - 4. The distance of the proposed system from the impacted location; and
 - 5. The available reasonable alternatives that would allow the facility to function efficiently at an alternate location.

8.0124 Wind Energy Systems

In addition to the standards in **Section 8.0103**, the following apply to wind energy systems where they are allowed through the Type II Special Use Review procedure:

- A. Renewable energy systems shall not be located on prominent building façade sections or on any facades or roof visible from the street of any listed landmark in **Table 5.0330** Historic and Cultural Landmarks List, and shall comply with **Section 5.0321**.
- B. Historic materials and architectural features shall not be removed or damaged with the installation of renewable energy systems per **Section 5.0321** and **Section 5.0323**.
- C. Landscape screening shall be located outside of any fencing surrounding the renewable energy systems or equipment requiring the shrub materials of a Type B buffer per **Section 9.0111(A)**.
- D. All wind energy system equipment shall be coated in a neutral color or muted tones to minimize the visual impact from the right-of-way, any public park or open space, or historic or cultural resource.
- E. Visual Impact: In order to determine a potential adverse visual impact, the following shall be considered:
 - 1. The extent to which the system is visible from the impacted location;
 - 2. The type, number, height and proximity of existing structures;
 - 3. The amount of vegetated screening;
 - 4. The distance of the proposed system from the impacted location; and
 - 5. The available reasonable alternatives that would allow the facility to function efficiently at an alternate location.

8.0125 Biomass Energy Systems

In addition to the standards in **Section 8.0103**, the following apply to biomass energy systems where they are allowed through the Type II Special Use Review procedure:

- A. In addition to the setback standards in **Article 4**, biomass energy systems shall be setback a minimum of 300 feet from any residential dwelling and 1,000 feet from a residentially designated district or hospital to minimize any potential negative impacts.
- B. The Applicant shall identify the specific location, type and number of trips of all anticipated vehicular traffic including delivery of the fuel to the site and export of fuel from the site.
- C. The biomass energy system shall be secured to prevent unauthorized access.
- D. All outdoor storage of biomass materials shall be screened from adjacent properties by an eight (8) foot wall.
- E. Biomass energy systems shall provide a Type E buffer per **Table 9.0111(A)** or an alternate plan per **Section 9.0100**.
- F. Visual Impact: In order to determine a potential adverse visual impact, the following shall be considered:
 - 1. The extent to which the system is visible from the impacted location;
 - 2. The type, number, height and proximity of existing structures;
 - 3. The amount of vegetated screening;
 - 4. The distance of the proposed system from the impacted location; and
 - 5. The available reasonable alternatives that would allow the facility to function efficiently at an alternate location.

8.0126 Geothermal Energy Systems

In addition to the standards in **Section 8.0103**, the following apply to geothermal energy systems where they are allowed through the Type II Special Use Review procedure:

- A. Visual Impact: In order to determine a potential adverse visual impact, the following shall be considered:
 - 1. The extent to which the system is visible from the impacted location;
 - 2. The type, number, height and proximity of existing structures;
 - 3. The amount of vegetated screening;
 - 4. The distance of the proposed system from the impacted location; and
 - 5. The available reasonable alternatives that would allow the facility to function efficiently at an alternate location.

8.0140 Special Use Review, Type III Procedure

8.0141 Purpose

A Type III procedure may be used to review certain uses subject to a Special Use Review. Uses subject to the Type III procedure require the exercise of discretion and judgment, and about which there may be broad public interest. The review provides an opportunity to allow a use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved. The review considers standards found in **Section 8.0103**, standards specific to the use found in **Sections 8.0144-8.0151**, and other Development Code standards which are applicable to the proposal. The criteria and standards set forth in this section apply only when the particular use is subject to a Special Use Review in the underlying land use district. The Hearings Officer is the decision authority for Type III Special Use Reviews unless otherwise noted, or if the proposed use is in a Design District, in which case the Design Commission is the decision authority.

For those Special Use Reviews where the Hearings Officer is the decision authority, appeals are heard by the Planning Commission. For those Special Use Reviews where the Planning Commission is the decision authority, appeals are heard by the City Council. For those Special Use Reviews where the Design Commission is the decision authority, appeals are heard by the City Council.

8.0142 Applicability of the Type III Procedure

The following uses are subject to the Type III Special Use Review procedure:

- A. Commercial Parking
- B. Major Event Entertainment (**Section 8.0144**)
- C. Waste Management (**Section 8.0145**)
- D. Civic Uses, excluding those subject to the Type II procedure
- E. Medical Uses (**Section 8.0146**)
- F. Parks, Open Spaces, and Trails, limited to golf courses, community parks, regional parks, multi-use paths and associated access points (**Section 8.0147**)
- G. Religious Institutions, limited to those where the principal place of assembly may accommodate more than 300 individuals (**Section 8.0148**)
- H. Schools, limited to high schools, community colleges and universities (**Section 8.0149**)
- I. Major Basic Utilities, limited to electrical generating facilities (**Section 8.0150**)

8.0143 Criteria

- A. Special Use Reviews through the Type III procedure shall address the standards in **Section 8.0103**, standards specific to the proposed use found in **Sections 8.0144 to 8.0151**, and development standards generally applicable to all uses and developments in the underlying land use district, unless specifically exempted by the provisions of this Section.
- B. The narrative for Special Use Reviews through the Type III procedures shall describe how the operating and physical characteristics of the proposal have been made reasonably compatible with and have a minimal impact on livability, appropriate use, and development of properties in the surrounding area of the subject site.

8.0144 Major Event Entertainment

In addition to **Section 8.0143**, the following apply to Major Event Entertainment where it is subject to a Type III Special Use Review:

- A. Major event entertainment shall have direct access to a street with a functional classification of major or standard arterial or greater.
- B. Unless located in a Design District, the Planning Commission is the decision authority for review. If in a Design District, the Design Commission is the decision authority for review.

8.0145 Waste Management

In addition to **Section 8.0143**, the following apply to Waste Management uses where they are subject to a Type III Special Use Review:

- A. Solid waste transfer stations, composting facilities, and solid waste landfills shall not be located adjacent to residentially designated land.
- B. Solid waste transfer stations, composting facilities, and solid waste landfills shall have direct access to a street with a functional classification of major or standard arterial or greater.

8.0146 Medical Uses

In addition to **Section 8.0143**, the following apply to Medical Uses where they are subject to a Type III Special Use Review:

- A. Hospitals shall have direct access to a street with a functional classification of Arterial or greater.
- B. Unless in a Design District, the Planning Commission is the decision authority for review. If in a Design District, the Design Commission is the decision authority.

8.0147 Parks, Open Spaces, and Trails

In addition to **Section 8.0143**, the following apply to Parks, Open Spaces, and Trails where they are subject to a Type III Special Use Review:

- A. All Parks, Open Spaces, and Trails uses are exempt from floor area ratio and maximum setback requirements.
- B. Golf courses shall have direct access to a street with a functional classification of minor arterial or greater.

8.0148 Religious Institutions

In addition to **Section 8.0143**, the following apply to Religious Institutions where they are subject to a Type III Special Use Review:

- A. This section is applicable to those religious institutions where the principal place of assembly can accommodate more than 300 individuals.
- B. Religious institutions shall have direct access to a street with a functional classification of minor arterial or greater.

8.0149 Schools

In addition to **Section 8.0143**, the following apply to Schools where they are subject to a Type III Special Use Review:

- A. For all school types, portable classrooms are exempt from floor area ratio, maximum building height, and maximum setback requirements.
- B. High schools shall have direct access to a street with a functional classification of minor arterial or greater.
- C. Unless in a Design District, the Planning Commission is the decision authority for review. If in a Design District, the Design Commission is the decision authority.

8.0150 Major Basic Utilities

In addition to **Section 8.0143**, the following apply to Major Basic Utilities where they are subject to a Type III Special Use Review:

- A. Electrical generating facilities shall not be located in or adjacent to residentially designated land.

8.0160 Modifications of a Special Use

- A. Modifications to a Special Use Review that meet the threshold for Design Review A shall be reviewed through the Design Review A. This includes interior tenant improvements and expansions less than 2,000 square feet.
- B. All other applications to modify, enlarge or intensify a use approved through the Special Use Review are through a Type II procedure, unless the following statements are true, in which case the Type III procedure shall be used.
 - 1. The use seeking modification, enlargement or intensification was originally subject to review through a Type III procedure; and
 - 2. For non-industrial uses, new floor area additions exceeds twenty-five percent of the existing floor area of the entire site or exceeds 10,000 square feet; or
 - 3. For non-industrial uses, outdoor area additions exceeds twenty-five percent of the existing outdoor area of the entire site or exceeds 10,000 square feet; or
 - 4. For industrial uses, new floor area additions exceeds twenty-five percent of the existing floor area of the site or exceeds 25,000 square feet.



SECTION 10.0600 - WIRELESS COMMUNICATION FACILITIES CO-LOCATION STANDARDS

Wireless Communication Facilities Co-Location Standards

10.0601 Co-Location Standards

10.0602 Request to Modify an Existing and Eligible Wireless Communication Facility

Co-Location Standards

10.0601 Co-Location Standards

The purpose of this section is to provide standards for the co-location of wireless communication facilities. Co-located facilities that cannot meet the standards of this section shall be reviewed through a Type II Special Use Review procedure.

- A. Co-located wireless communication facility antennas shall meet the following standards:
 - 1. The co-located antennas are proposed for an approved wireless communication facility or other location;
 - 2. Additional equipment facilities may be contained within the confines of the existing approved site;
 - 3. Antennas do not extend more than two feet from the pole, co-location facility or existing antenna array upon which it will be attached; or do not extend beyond the easement where the co-location facility is located, whichever distance is less.
- B. Co-located antennas shall obtain a building permit.
- C.
 - 1. All wireless communication facility co-location proposals for personal wireless services shall be subject to the requirements and limitations of 47 U.S.C. 332(c)(7) and the rules adopted by the Federal Communications Commission to implement said section.
 - 2. All wireless communication facility co-location proposals shall be subject to the requirements and limitations of 47 U.S.C. 1455(a) and the rules adopted by the Federal Communications Commission to implement said section.
 - 3. In the event the applicable federal laws or rules conflict with **Section 10.0601**, the provisions of the applicable federal laws and rules shall apply.

10.0602 Request to Modify an Existing and Eligible Wireless Communication Facility

Notwithstanding **Section 8.0103**, **Section 8.0122** or **Section 10.0601**, the modification of a wireless communication facility that is an “eligible facility” shall be subject to the following:

- A. Terms as used in **Section 10.0602** shall have the meanings provided by 47 U.S.C. 1455(a) and the rules adopted by the Federal Communications Commission to implement said section (Mandatory Approval Provisions).
- B. The Manager shall comply with the completeness process, review process and timelines as provided by the Mandatory Approval Provisions. 47 U.S.C. 1455(a).
- C. As required by 47 U.S.C. 1455(a), the Manager may not deny and shall approve an eligible facility request for a modification of an existing wireless tower or base station that meets the requirements of the Mandatory Approval Provisions. Notwithstanding the foregoing, the Manager may place conditions on the grant of an eligible facility request, provided that those conditions are consistent with the requirements of the Mandatory Approval Provisions.
- D. Any 47 U.S.C. 1455(a) application that the City grants, whether by City action or by operation of FCC rule or federal law, shall be subject to the condition that the applicant comply with:
 - 1. The camouflage requirements in the City of Gresham Community Development Code or in the original approval of the existing tower or base station;
 - 2. The applicable provisions of the codes adopted and enforced pursuant to GRC Article 10.05.
 - 3. Any other generally applicable City laws reasonably related to health and safety.
- E. Any application that is deemed granted by reason of the City’s failure to act within the applicable time periods provided in federal law:
 - 1. Shall not be deemed granted until the Applicant provides notice to the City, in writing, that the application has been deemed granted after the applicable time period has expired; and
 - 2. Shall be subject to all requirements in **Section 10.0602(D)**.

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