



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD



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

Date: October 06, 2015
Jurisdiction: City of Happy Valley
Local file no.: LDC-02-15
DLCD file no.: 005-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 06/15/2015. 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 35 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: OCT 02 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 OADR 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 Happy Valley

Local file no.: **LDC-02-15**

Date of adoption: 9-15-15

Date sent: 9/29/2015

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): 4/3/2015

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:

No

Local contact (name and title): Michael D. Walter, Economic & Community Development

Phone: 503 783-3839

E-mail: michaelw@happyvalleyor.gov

Street address: 16000 SE Misty Drive

City: Happy Valley

Zip: 97086

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:

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:

Title 16 of City's Municipal Code (Land Development Code) - See Attached

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: None

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.

Mayor
Honorable Lori DeRemer



City Manager
Jason A. Tuck

September 29, 2015

File No. LDC-02-15
(Administrative Amendments)

NOTICE OF DECISION

This is official notice of action taken by the City of Happy Valley Planning Commission and City Council public hearings held on August 11, 2015 and September 15, 2015, with regard to an application by City of Happy Valley for Administrative Amendments (Local File No. LDC-02-15), focusing on changes to Title 16 of the City's Municipal Code (Land Development Code) in regard to wireless communications facilities.

At the final public hearing, the City Council voted to approve LDC-02-15 based upon submitted information, public testimony, and the recommendation of the Planning Commission. Copies of the Planning Commission and City Council Staff Reports for LDC-02-15 are available upon request.

This action of the City Council is subject to appeal to the State Land Use Board of Appeals. Staff from the City's Planning Division (503-783-3800) can provide information regarding the appeal process.

A handwritten signature in black ink, appearing to read 'Michael D. Walter', is written over a horizontal line.

Michael D. Walter
Economic & Community Development Director

cc: City of Happy Valley, Applicant
Participants of Record

16000 SE Misty Drive, Happy Valley, Oregon 97086-4288
Telephone: (503) 783-3800 Fax: (503) 658-5174
happyvalleyor.gov

CITY OF HAPPY VALLEY
ORDINANCE NO. 481

AN ORDINANCE AMENDING MULTIPLE SECTIONS OF TITLE 16 (LAND DEVELOPMENT CODE) OF THE
CITY OF HAPPY VALLEY MUNICIPAL CODE – ADMINISTRATIVE AMENDMENTS

THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:

WHEREAS, Application LDC-02-15 was a staff initiated request to amend sections of the City's Municipal Code as detailed within Exhibit "B"; and

WHEREAS public hearings were held before the City of Happy Valley Planning Commission on May 12, 2015 and August 11, 2015; and

WHEREAS, the Planning Commission recommended the City Council approve the changes to Title 16 of the Municipal Code (as amended) as detailed in the Staff Report to the City Council dated September 15, 2015; and

WHEREAS, the City has forwarded a copy of the proposed amendments to the Oregon Department of Land Conservation and Development (DLCD) and METRO in a timely manner; and

WHEREAS, the Council of the City of Happy Valley, Oregon, has determined that it is reasonable, necessary and in the public interest to make the proposed amendments as detailed within Exhibit "A"; and

WHEREAS, the Council hereby adopts the proposed amendments as detailed in Exhibit "B", as supported by the Findings of Fact in the Staff Report to the City Council dated September 15, 2015, and as discussed at the regular meeting of the City Council on September 15, 2015; and

NOW, THEREFORE, based on the foregoing,

THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:

Section 1. The City of Happy Valley declares that the amendments to Title 16 of the City's Municipal Code be amended as set forth as part of Exhibit "B" and are fully incorporated herein.

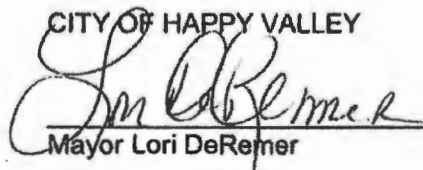
Section 2. The City of Happy Valley declares that the Findings of Fact included within the Staff Report to the City Council dated September 15, 2015 are hereby adopted in conjunction with this Ordinance.

BE IT FURTHER DECLARED that this Ordinance shall become effective thirty (30) days after approval by the City Council.

This ordinance takes effect 30 days after adoption.

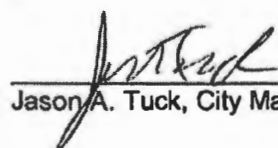
COUNCIL APPROVAL AND UNANIMOUS ADOPTION AT ONE MEETING: [September 15, 2015]

CITY OF HAPPY VALLEY



Mayor Lori DeReimer

ATTEST:



Jason A. Tuck, City Manager

FINAL DEVELOPMENT CODE TEXT AMENDMENTS

NOTE: Proposed text is in **bold, underline** – text proposed for removal is in ~~strikethrough~~.

[...]

16.12.030 Definitions.

The following definitions are organized alphabetically and some related terms are also grouped together and cross-referenced under group leadings (e.g., Lot Types). See also Chapter 16.21 for descriptions of the land use districts.

Abutting. Properties that share a common property line at any point along the boundary of either property. Abutting includes the terms adjacent, adjoining and contiguous. Abutting includes properties that are separated by a private roadway, driveway or drive aisle but does not include properties that are separated by a public right-of-way. Contiguous or adjoining, though not including intervening or bordering public right-of-way. Private drives or drive aisles are included as abutting lands for purposes associated with the Land Development Code. Abutting shall include the terms adjacent, adjoining and contiguous.

[...]

Alternative antenna support structures. Roofs of buildings, provided they are thirty (30) feet or more in height above the street grade upon which such buildings front, church steeples, existing and replacement utility poles, flagpoles, street light standards, traffic light and traffic sign structures, billboards and commercial signs and other similar man-made structures and devices that extend vertically from the ground to a sufficient height or elevation to accommodate the attachment of antennas at an altitude or elevation that is commercially desirable for wireless communications signal transmission and reception.

Amateur radio. The licensed and private use of designated radio bands, for purposes of private recreation, non-commercial exchange of messages, experimentation, self-training, and emergency communication pursuant to an amateur operator license granted by the Federal Communications Commission. Amateur radio is also commonly referred to as “ham radio.”

Ambient. Normal or background environmental condition, as in the level of light, dust or noise.

Antenna. A specific device used to receive or capture incoming and/or to transmit outgoing radio-frequency (RF) signals, microwave signals and/or other communications energy transmitted from, or to be received by, other antennas. Antennas regulated by this title include omnidirectional (or “whip”) antennas, directional (or “panel”) antennas, **micro cell**, parabolic (or “dish”) antennas and any other devices designed for the reception and/or transmission of radio-frequency (RF) signals or other communication technologies. **Antenna does not include support structures, utility structures, or support towers.**

Antenna array. ~~Two or more antenna.~~ A grouping of two or more antennas on a single support structure, support tower, or utility structure.

Antenna height. The vertical distance measured from the ground surface at grade to the tip of the highest point of the antenna on the proposed or existing structure.

Antenna support structure. A structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennas at a height, altitude or elevation which is above the base of such structure. Antenna support structures include, but are not limited to, the following:

1. “Lattice tower” which is a vertical support structure consisting of a network of crossed metal braces, forming a tower which may be three, four or more sided;
2. “Monopole tower” which is a vertical support structure consisting of a single vertical metal, concrete or wooden pole, pipe, tube or cylindrical structure, typically round or square, and driven into the ground or mounted upon or attached to a foundation.

[...]

Automobile-oriented use. Automobiles and/or other motor vehicles are an integral part of the use, such as drive-through restaurants and banks.

Auxiliary support equipment. All equipment necessary to provide wireless communications signals and data transmission, including, but not limited to, coaxial or fiber-optic cables, auxiliary power equipment, and electronic processing devices. Auxiliary support equipment also includes the shelter, cabinets, and other structural facilities used to house and shelter necessary equipment. Auxiliary support equipment does not include antennas, support towers, utility structures, support structures, or external cables and wires that are not required to provide backup power to a wireless communication facility.

Awning. A shelter supported entirely by the exterior wall of a building and composed of nonrigid materials except for a supporting framework.

Bankful stage. Defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the stage or elevation at which water overflows the natural banks of a stream or other waters of the State and begin to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankful stage.

Basement. That portion of a building which has less than one-half of its height measured from finished floor to finished ceiling above the average elevation of the adjoining grade.

Base station. A structure that supports or houses an existing antenna, auxiliary support equipment, transceiver, or other associated equipment, encompassing such equipment in any technological configuration, which has been reviewed and approved under applicable codes. Base station does not include support towers or any equipment associated with a support tower.

[...]

Bus stop. A location where bus service stops to load and unload passengers. For purposes of measuring, the bus stop is the location of a sign denoting the bus stop.

Camouflaged. Any wireless or communication facility that is designed to blend into the surrounding environment. Examples of camouflaged facilities may include architecturally screened roof-mounted antennas integrated into architectural elements, towers painted to match the ambient background colors, and employing similar techniques to minimize the visual impact of the facility.

[...]

Clearing. Any activity that removes existing vegetation or strips surface material from any portion of the site.

~~**Co-location (wireless communication facility).** For the purposes of Section 16.44.020, utilization of a single antenna support structure, alternative antenna support structure or an underground conduit or duct, by more than one wireless communications service provider.~~

Collocation. For the purposes of Section 16.44.020, the mounting or installation of antennas and/or auxiliary support equipment on an existing support tower, support structure, replacement structure or base station for the purpose of transmitting and/or receiving radio frequency signals for wireless communication purposes, but not including installation of a replacement structure or a substantial change in the physical dimensions of the existing wireless communications facility, as defined below.

[...]

Maintenance. For the purposes of Section 16.44.020, emergency or routine repairs or replacement of transmitters, antennas, or other components of previously approved wireless communication facilities which do not create a substantial change in the physical dimensions.

[...]

Modification. For the purposes of Section 16.44.20, a change or alteration to an existing wireless communications facility or collocation on a base station, including, but not limited to, the addition, removal and/or replacement of antennas and/or auxiliary support equipment.

[...]

Neighborhood. A residential area usually having distinguishing character or geography.

Neighborhood character. Those unique attributes including, but not limited to, architecture, historical and cultural features, development patterns, landscape, hardscape and the size, scale and spacing of buildings and other structures that define a neighborhood's identity.

[...]

Orientation. To cause to face toward a particular point of reference (e.g., "a building oriented to the street").

Original structure. For the purposes of Section 16.44.020, a lawfully placed utility structure located in the right-of-way as of the effective date of the right-of-way use agreement between the owner and the City.

[...]

Public and semi-public buildings and uses. A building or use, such as a church, school, auditorium, meeting hall, hospital, stadium, library, art gallery, museum, fire station or utility substation or use such as a park or playground or community center, owned or operated by a religious, fraternal, charitable or other nonprofit organization; a public utility; or any governmental agency.

Public safety facility. A facility necessary to respond to an immediate hazard to the public health and safety, and that is owned, leased, or operated by the City of Happy Valley or other public agency or private utility. Public safety facilities include fire and police stations, flood control facilities, water towers and pump stations needed for emergency service, and emergency communication broadcast facilities. **For the purposes of Section 16.44.020, public safety communication facilities are temporary wireless communications facilities that are deployed for emergency purposes and that will remain in use no longer than is needed to provide emergency service.**

[...]

Renovation plan. A written proposal to restore the distinctive and historically authentic architectural, historical, or cultural character of a historic resource while retaining or establishing the possibility for efficient, contemporary use.

Replacement structure. For the purposes of Section 16.44.020, a utility structure that replaces a lawfully existing utility structure or support structure to accommodate wireless communication facilities and does not result in an increase in the total number of utility, guy, or support poles in the right-of-way or on private property.

[...]

Ridge line (building). The top of a roof at its highest elevation.

Right-of-way. An area that allows for the passage of people or vehicles. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public will be in a tract. **Right-of-way also includes the space upon, above, below, in, along, across, over, or under public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or city owned property not generally open to the public for travel. This definition applies only to the extent of the City's right, title, and interest in the property and its authority to grant a license, permit, or other permission to use and occupy the property.**

[...]

Routine repair and maintenance. Activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

Screen. For the purposes of Section 16.44.020, to effectively obscure the view of the base of a wireless communication facility and its auxiliary support equipment.

[...]

Site frontage. The part of a site that abuts a street. See also "block frontage."

Siting. For the purposes of Section 16.44.020, the location, construction, collocation,

modification, or installation of a wireless communication facility.

Skilled nursing facility. Skilled nursing facilities provide twenty-four (24) hour direct medical, nursing and other health services. Registered nurses, licensed practical nurses, and nurses' aides provide services prescribed by resident(s) physician(s). Skilled nursing is for those persons who need health supervision but not hospitalization. The emphasis of this use is on nursing care, but convalescent, restorative physical, occupational, speech, and respiratory therapies are also provided. The level of care may also include specialized nursing services such as specialized nutrition, rehabilitation services and monitoring of unstable conditions. The term skilled nursing facility is also synonymous with the terms nursing facility and nursing home.

Slope. The "slope" of a lot is calculated pursuant to Chapter 16.32.

Small Cell Facility. **Wireless communication facilities and associated electronics and equipment designed to deliver wireless communication service and attached to a support structure or utility structure, meeting size limitations defined herein, and operating as part of a small cell network. Small cell panel antennas shall be no taller than two feet high, small cell omni antennas shall be no taller than four feet high and no wider than the diameter of the support structure, small cell microwave dishes shall be no larger than two feet in diameter and shall not protrude more than six feet horizontally from utility structures or other support structures within the public right of way to which they are attached. Auxiliary support equipment associated with any small cell facility shall be no larger than 17 cubic feet in size.**

Small Cell Network. **A collection of functionally related small cell facilities designed to deliver wireless communication service. The small cell facilities in a small cell network may be located on one or more utility structures or support structures within and/or outside of the right-of-way.**

Stealth technology. **A facility, including but not limited to antennas, support towers, and ancillary support equipment that, to the extent feasible, are screened or otherwise designed such that the facility blends in with the surrounding area and visual impacts from nearby streets or properties are minimized. In the case of a modification, the change or alteration does not result in a substantial change to the physical dimensions of a support structure. In the case of a support tower or monopole, "stealth technology" also means a facility that is designed and installed with specific features that render it visually similar to nearby objects such as trees, flag poles, or utility poles.**

[...]

Subdivision. To divide land into four or more lots within a single calendar year. See also Chapter 16.63, Land Divisions and Property Line Adjustments and ORS 92.010(13).

Subject property. The parcel or parcels of land that are the subject of the permit and/or approval action. (See "site.")

Substantial change in physical dimensions. For the purposes of Section 16.44.020, a modification which meets one or more of the following criteria:

1. The modification would increase the existing height of a support 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, or would increase the height of a base station by more than 10 feet or 10%, whichever is greater, provided the support tower or base station is located outside the right-of-way; or

2. The modification would protrude from the edge of the support tower more than twenty feet, or more than the width of the support tower structure at the level of the appurtenance, whichever is greater, and further provided the support tower is outside the right-of-way; and for towers in the right-of-way and base stations, the modification would increase the height more than 10% or six feet, whichever is greater; or

3. The modification would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four; or for support towers in the right-of-way and base stations, the modification involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the support tower or base station, 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 support tower or base station; or

4. The modification would involve excavation or deployment outside the current site, defined, with respect to support towers other than support towers in the right-of-way, as the current boundaries of the leased or owned property surrounding the support tower and any access or utility easements currently related to the site; with respect to support towers in the right-of-way and base stations, site is restricted to that area in proximity to the support tower, base station, or auxiliary support equipment already deployed on the ground; or

5. A replacement structure; or

6. The modification would defeat the concealment elements of the support tower or base station; or

7. The modification does not comply with conditions associated with the siting approval of the construction or modification of the support tower, base station, or base station equipment, provided 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 subsection (1)-(4) of this definition.

[...]

Window. A transparent or semi-transparent (not more than fifty (50) percent opaque) glazing on a building façade. For the purpose of this Code, a window may be a display window (e.g., for merchandise, art, etc.) that is integral to a building design, but a window is not a display box mounted onto the exterior of a building.

Wireless communications facility. ~~An unstaffed facility for the transmission and/or reception of RF, microwave or other signals for commercial communications purposes, typically consisting of an equipment enclosure, an antenna support structure or an alternative antenna support structure and one or more antennas.~~ Any structure, antenna, equipment or other device that transmits and/or receives wireless communications, including but not limited to antennas of any type, support towers, support structures, equipment cabinets, and other auxiliary support equipment associated with the transmission of wireless communications, excluding amateur radio stations as defined by the Federal Communications Commission.

Wireless communications service. The providing or offering for rent, sale, lease or in exchange for other consideration, of the transmittal and reception of voice, data, image, graphic and other information by the use of current or future wireless communications facilities. Also, any wireless communication services authorized by the Federal Telecommunications Act of 1996 as amended, that currently exist or that may be developed in the future, including but not limited to cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging, similar Federal Communications Commission-licensed commercial wireless telecommunications services, but excluding wireless communication services used exclusively by gas and electric utilities and cooperative utilities for internal communications of an operational nature.

NOTE: Chapter 16.44.020 is deleted in its entirety and the following text is adopted in lieu thereof:

16.44.020 Wireless Communication Facilities

A. Purpose. The purpose of this Section is to assure that wireless communication facilities are located, designed, installed, maintained and removed in a manner that provides for the effective provision of wireless communications within the City, while protecting and promoting the health, safety, and welfare of the City and its residents by:

1. Requiring the collocation, to the greatest extent possible, of new wireless communication facilities on existing facilities in order to minimize the number of support towers and related equipment;
2. Carefully considering the topography, natural features, and adopted overlay zones in selecting potential wireless communication facility sites;
3. Encouraging the use of existing structures, including, but not limited to, freestanding structures such as light or utility poles and water towers, instead of constructing new support towers;
4. Encouraging the location of new support towers and related equipment in non-residential zones;
5. Limiting new structures and regulating the enlargement or expansion of existing structures in the right-of-way for the purpose of providing wireless communication facilities; and
6. Providing wireless communication services using facilities with minimal visual impact.

B. Excluded Facilities. The following facilities are exempt from the requirements of this Section:

1. Siting of dish antennas solely for the benefit of persons residing on a property.
2. Amateur or "Ham" radios and associated equipment.
3. Public safety communication facilities.
4. "Utility facilities" as defined in LDC 16.12.030.
5. Maintenance of existing wireless communication facilities, as defined in this Section.

C. General Provisions: siting priority, land use districts, collocation requirements

1. Siting Priority. Except as otherwise provided in subsection 3 of this section, a wireless communication facility shall be sited according to the following priority, by descending order of preference:
 - a. First priority: collocation of an antenna or antenna array, including small cell facilities, on an existing support tower, support structure, or utility structure;
 - b. Second priority: collocation of an antenna or antenna array, including small cell facilities, on a replacement structure;
 - c. Third priority: substantial change in the physical dimensions of a support tower or replacement with a support tower that represents a substantial change in the physical dimensions of the original support tower;
 - d. Fourth priority: construction of a new support tower.
2. Land Use Districts.
 - a. Wireless communication facilities are allowed subject to the provisions of this Section, the applicable requirements in each land use district, and subject to the following additional limitations:

Zones:	Collocation with no Substantial Change and Small Cell Facilities:	Other new facility or Substantial Change:
Residential	Permitted	Collocation with Substantial Change permitted as a Conditional Use subject to the development and design standards. New support tower permitted as a Conditional Use subject to the requirements of Section 16.44.020.E and the development and design standards of this Section.
Steep Slopes and Natural Resources Overlay	Small cell permitted	Prohibited
Institutional & Public Use	Permitted	Permitted, subject to the development and design standards of this Section
Commercial	Permitted	Permitted, subject to the development and design standards of this Section
Industrial	Permitted	Permitted, subject to the development and design standards of this Section ¹
Future Urban – 10 acres	Permitted	Permitted as a Conditional Use subject to the development and design standards of this Section.

b. Small cell facilities are permitted in all zones within and/or outside of the right-of-way, per the size requirements found within the Definitions section, above.

c. The siting of new speculation support towers is prohibited in all zones.

d. All wireless communication facilities, except for small cell facilities, located in the right-of-way shall be attached to existing utility structures or replacement structures.

e. Modifications are permitted in all zones, provided the modification does not result in a substantial change in the physical dimensions of the existing support tower or base station.

3. Collocation required

a. Except for a small cell facility or a new support tower or structure proposed in an industrial district, a wireless communication facility located outside the right-of-way shall be collocated, unless the applicant demonstrates that:

(i) No existing support structures or support towers which meet the applicant's coverage, capacity and engineering requirements are located within the identified geographic area;

(ii) Existing support towers, support structures, utility structures or replacement structures are not of sufficient height to provide the identified service within the geographic area;

(iii) Collocation would interfere with other wireless communication facilities located on an existing support structure or support tower or would jeopardize the physical integrity of the facility upon which collocation would be made;

(iv) Consent cannot be obtained for the collocation on an existing support structure or

¹ WCF are permitted outright in the industrial districts, with a height maximum of 200 feet.

- support tower despite the applicant's reasonable efforts to obtain such consent; or
- (v) It is not feasible from an engineering or structural standpoint to achieve collocation on an available existing support structure or support tower either due to structural limitations or because the needed auxiliary support equipment cannot be accommodated at the site.
- b. All wireless communication service providers shall cooperate with other providers to achieve collocation of facilities and all new support structures and support towers shall be designed so as to not preclude collocation provided collocation can be accommodated in a manner consistent with the applicable design and development standards.
- c. In the event collocation is represented to be infeasible, the City may retain a technical expert in the field of telecommunications engineering to evaluate whether collocation at the site is feasible.
- d. A wireless communication service provider shall exercise good faith in attempting to achieve collocation with other providers and sharing antenna sites, provided that such shared use does not technically impair its ability to provide wireless communication service. Such good faith shall include sharing of technical information to evaluate the feasibility of collocation. The City may deny a permit application for a wireless communication facility if it determines that the applicant has not made a good faith effort to collocate on an existing support structure or support tower.

4. Collocation/Modification standards.

- a. All collocations and modifications shall be designed in such a way as to be visually compatible with the structures on which they are placed. If the existing support structure incorporates stealth technologies or camouflage in its design, collocated and modified facilities shall be similarly designed.
- b. Except for small cell facilities, auxiliary support equipment shall be located within the existing enclosure and shall not result in any material exterior changes to the enclosure.
- c. Collocations and modifications to existing support structures, support towers or base stations shall meet all applicable building code requirements. The applicant shall demonstrate to the satisfaction of the Building Official that the collocation or modification will not adversely affect the structural integrity of the support structure, support tower or base station.
- d. A collocation or modification proposed for a building listed in the Happy Valley Register of Historic Structures shall be designed to incorporate or enhance the existing architectural and design elements of the building.

E. Permit required; Siting limitations; Interference; Abandonment

- 1. Except as otherwise provided in this Section, a new wireless communication facility shall not be sited within the City unless a permit is obtained consistent with this Section and the applicable requirements of this Code.
- 2. New support towers are permitted as Conditional Uses in all residential land use districts if, in addition to demonstrating compliance with the Conditional Use, development and design standards, the applicant also demonstrates compliance with the collocation requirements in Section 16.44.020.D.3.a and the following conditions exist:
 - a. The proposed facility is necessary to satisfy the applicant's coverage, capacity and/or engineering requirements within the identified geographic area and the facility is the least intrusive means to meet these requirements, including documentation from a radio frequency (RF) engineer or a licensed civil engineer regarding the nature and necessity of the coverage, capacity and/or engineering requirements;
 - b. The proposed facility must be sited in a residential zone to satisfy the applicant's coverage, capacity and/or engineering requirements;
 - c. The characteristics of the site (size, shape, location, topography, and location of improvements and natural features) are suitable for the proposed facility;

d. The proposed facility will not substantially change the character of the surrounding residential area in a way which limits or precludes use of the surrounding properties consistent with the provisions of the residential zone;

e. The proposed facility is designed to minimize the negative impacts on the surrounding properties and uses by utilizing existing site characteristics, including but not limited to the site's size, shape, location, topography, improvements, and natural features, as well the incorporation of camouflage and/or stealth technology. Negative impacts are minimized if there is:

- (i) A decrease in negative visual impacts, including, but not limited to, visual clutter;
- (ii) Better preservation of views or view corridors; and
- (iii) A decrease in any other identifiable negative impacts to the surrounding area's primary uses.

3. A new support structure or support tower shall not be constructed, installed or erected within one thousand (1,000) feet of any other support structure or support tower that is owned, operated or occupied by the same wireless communication service provider. This separation standard does not apply to small cell facilities that work together in a small cell network. Exceptions to this standard may be permitted by the Planning Official or person designated by the Planning Official if, after reviewing evidence submitted by the service provider, the Planning Official or designee finds: (a) that closer spacing is required in order to provide adequate wireless communication service to the subject area; and (b) the service provider has exhausted all reasonable means of collocating on other existing structures located within the proposed service area. The Planning Official's or designee's decision may be appealed to the review body provided the appeal is filed with the Planning Official or designee within ten (10) calendar days of the decision. The appeal shall include the appropriate fees, as set by the City Council by resolution.

4. A support structure or support tower that has not had an antenna or antenna array mounted on it for a period of one hundred eighty (180) successive days, or if the antenna or antenna array mounted thereon are not operated for a period of one hundred eighty (180) successive days, shall be considered abandoned and the owner shall remove the structure or tower and any accompanying auxiliary support equipment within ninety (90) days from the date of written notice from the City. During the ninety (90) days, the owner may apply, and upon a showing of good cause, may be granted an extension of time on such terms as the Planning Official or designee shall determine. If the structure and auxiliary support equipment are not removed, the City may declare the abandoned facility to be a nuisance and seek enforcement pursuant to the Happy Valley Municipal Code and/or may seek and obtain a court order directing the structure or tower to be removed and placing a lien on the real property upon which the structure(s) is located in an amount equal to the cost of removal.

F. Application Submittal Requirements. In addition to the submittal requirements for the applicable approval type in LDC 16.61, an application for a new wireless communication facility shall include the following:

1. Collocation/Modification//Small Cell Facility installation application.

a. A site plan that includes a description of the proposed new facility or modification, the design and dimensions, together with elevations showing all components of the existing support structure or support tower and its connection to utilities;

b. Documentation that the proposed facility meets the radio frequency emissions requirements of the Federal Communications Commission;

c. Documentation that any auxiliary support equipment will not emanate noise at levels that exceed City standards, or designs showing how the sound will be effectively modified to meet those standards by means of baffling, barriers, or other suitable means;

d. An engineer's certification that the proposed Support Structure or Support Tower will safely handle the load created by the collocation, modification or attachment and comply with American

National Standards Institute (ANSI) and other industry safety and structural codes and standards.

2. Application for a new Wireless Communication Facility, other than a Collocated/Modified/Small Cell Facility subject to Section 16.44.020.F.1. In addition to the submittal requirements listed in Section 16.44.020.F.1, an application for a new Wireless Communication Facility or modification shall include the following:

a. An engineer's certification that the proposed support structure or support tower will safely handle the load created by the new facilities and future collocation facilities, and complies with American National Standards Institute (ANSI) and other industry safety and structural codes and standards.

b. For new support towers, documentation from a radio frequency (RF) engineer or a licensed civil engineer that the necessary service cannot be provided by collocation on, or modification to, an existing support tower or support structure or utility structure, or by attachment on a replacement structure for one or more of the following reasons:

(i) No existing support structures, or utility structures are located within the geographic area where service will be provided;

(ii) There are no existing support towers, support structures or towers that meet the applicant's coverage, capacity and/or engineering requirements within the identified geographic area;

(iii) Collocation would interfere with other wireless communication facilities location on an existing support structure or tower, or would jeopardize the physical integrity of the facility upon which collocation would occur;

(iv) Consent cannot be obtained for the collocation on an existing support structure or tower despite the applicant's reasonable efforts to obtain such consent; or,

(v) It is not feasible for engineering or structural reasons to collocate on an available existing support structure or tower either due to structural limitations or because the needed auxiliary support equipment cannot be accommodated at the site.

c. An alternatives analysis for new support towers demonstrating compliance with the siting priorities of Section 16.44.020.D.1; provided, however, that an applicant is not required to consider small cell facilities as an alternative to a proposed new support tower.

d. The number and type of antennas that the support tower is designed to accommodate.

e. A signed statement of compliance from the owner of the wireless communication facility that the owner will allow timely collocation by other users, provided all safety, structural, technological, and monetary requirements are met.

f. A visual study containing, at a minimum, color simulations showing the appearance of the proposed support tower, antennas, and auxiliary equipment from at least three viewpoints within reasonable proximity of the site. The viewpoints shall be chosen by the applicant, but shall include representative views from residential buildings, historic resources, or historic districts located within two hundred and fifty feet of the proposed site. If the support tower must comply with the design standards applicable to Historic Structures, the graphic simulation shall include the proposed design.

g. If applicable due to the nature of the proposal, coverage maps showing any gap in the service provider's coverage, capacity or technologies and the minimum height or configuration of the facility needed to fill the gap.

3. Application for new Support Tower in Residential Zones.

In addition to the submittal requirements of Section 16.44.020.F.1 and 16.44.020.F.2, an application for a new support tower in any residential zone shall also provide documentation that:

a. The proposed facility is necessary to satisfy the applicant's coverage, capacity and/or engineering requirements within the identified geographic area and the facility is the least intrusive means to meet these requirements, including documentation from a radio frequency (RF) engineer or a licensed civil engineer regarding the nature and necessity of the coverage,

capacity and/or engineering requirements;

b. The proposed facility must be sited in a residential or future urban zone to satisfy the applicant's coverage, capacity and/or engineering requirements;.

c. The characteristics of the site (size, shape, location, topography, and location of improvements and natural features) are suitable for the proposed facility;

d. The proposed facility will not substantially change the character of the surrounding residential area in a way which limits or precludes use of the surrounding properties consistent with the provisions of the residential zone;

e. The proposed facility is designed to minimize the negative impacts on the surrounding properties and uses by utilizing existing site characteristics, including but not limited to the site's size, shape, location, topography, improvements, and natural features, as well the incorporation of camouflage and/or stealth technology. Negative impacts are minimized if there is:

(i) A decrease in negative visual impacts, including, but not limited to, visual clutter;

(ii) Better preservation of views or view corridors; and

(iii) A decrease in any other identifiable negative impacts to the surrounding area's primary uses.

G. Procedures.

1. Applications for collocation on an existing support structure, support tower, base station or utility structure, or modification that will not result in a substantial change in the physical dimension of the existing facility shall be reviewed pursuant to the Type I Administrative procedure provided at Section 16.61.020.

2. An application for small cell facilities shall be reviewed pursuant to the Type I Administrative procedure provided in Section 16.61.020. At the applicant's discretion, a consolidated application addressing all or part of a small cell network may be submitted for Type I review as an alternative to individual permitting for each small cell facility in a small cell network.

3. An application for a modification that will result in a substantial change in the physical dimension of the existing facility shall be reviewed pursuant to the Type II Administrative procedure provided at Section 16.61.030, unless the application is for a site in a residential or future urban zone.

4. An application to site a new wireless communication facility on a new support structure or support tower in zones other than residential or future urban zones shall be reviewed pursuant to the Type II Administrative procedure provided at Section 16.61.030.

5. Except as provided above in subsection 16.44.020.G.1 and 16.44.020.G.2, an application to site a new wireless communication facility on a new support structure or support tower in all residential or future urban zones shall be reviewed pursuant to the Type III Quasi-judicial procedure provided at Section 16.61.040.

6. The City shall issue a final decision on all applications consistent with the timing requirements of ORS 227.178 and applicable federal regulations.

H. Approval Criteria.

1. Collocated Facilities and Modifications.

a. A new wireless communication facility or modification to an existing facility that does not result in a substantial change in the physical dimension of the existing facility shall meet the applicable collocation requirements and standards of this Section.

b. A new wireless communication facility or modification to an existing facility that would result in a substantial change in the physical dimension of the existing facility shall meet the applicable collocation requirements and standards of this Section.

2. New Support Structure or Tower.

a. A new support structures or support towers is subject to all provisions of this Section.

b. In addition, a new support structure or support tower shall meet the following criteria:

(i) The application as approved will minimize and/or mitigate reasonably likely

adverse impacts of the use on the adjacent properties, surrounding neighborhood and neighborhood character. In order to mitigate and minimize the impact of the support structure or tower, the City may impose conditions relating to the size, design, operating conditions, or other features of the proposal, including those which may be applicable to Conditional Uses under this Code; and,
(ii) The application demonstrates compliance with the collocation requirements in Section 16.44.020.D.3.a.

I. Development and Design Standards.

1. Setback requirements

a. New support structures and support towers and auxiliary support equipment shelters must meet the applicable setback requirements of the zone in which they are proposed to be sited, except as required in subsection b or c below.

b. A new support structure or support tower proposed on property that is adjacent to a Residential zone or an existing residential structure must be set back from the relevant property line or structure by a distance equal to the height of the proposed support structure or support tower.

c. The review body may require greater setbacks for a proposed new support structure or support tower to assure that the proposed facility complies with the visual impact standards of this Section or to address identified safety concerns.

2. Height limitations

a. A new support structure or support tower located in an Institutional, Commercial or Industrial zone shall meet the applicable height limitation for the zone in which it will be located, provided that the facility may exceed the height limit in the zone by demonstration by the applicant that additional height is necessary to meet the applicant's coverage, capacity and/or engineering requirements for an identified technology or service. However, a new support structure or support tower may not exceed 200 feet in an Industrial zone or 150 feet in any other zone. A "speculative height" support structure or support tower designed to accommodate unknown future users are not allowed in any zone.

b. A new support structure or support tower proposed in a Residential or Future Urban zone shall meet the otherwise applicable height standards in the zone, provided that the facility may exceed the height limit in the zone by demonstrating that additional height is necessary to meet the applicant's coverage, capacity and/or engineering requirements for an identified technology or service. A new support structure or support tower in a Residential or Future Urban zone must be constructed using stealth technology.

c. An antenna attached to an existing support structure, including utility structures and replacement utility structures, may add 20 feet to the overall height of the existing structure regardless of the height standard of the underlying zone.

3. Development Standards

a. The area around the base of support towers (including any auxiliary support equipment) must be fenced, with a sight-obscuring fence a minimum of six feet in height. The fenced area is to be surrounded by evergreen shrubs (or a similar type of evergreen landscaping), placed within a landscaped strip a minimum of ten (10) feet in width. In the event that placement of a proposed support tower and/or auxiliary support equipment is located in a unique area within a subject site that would not benefit from the addition of landscaped screening, the Planning Official or designee may require that the applicant submit a landscape plan illustrating the addition of a proportional landscape area that will enhance the subject site either at a building perimeter, parking lot, or street frontage, adjacent to or within the subject site. Although barbed wire is permitted, no concertina (razor) wire shall be installed atop any fence or barrier.

b. All support structures, support towers, antennas, and antenna arrays and associated facilities shall be finished in a non-reflective neutral color. For a new support structure or tower, the Review body may require camouflaging or stealth technology.

- c. Construction and installation of a new support structure or an new support tower is subject to all applicable building code requirements.
- d. Antennas, antenna arrays, support structures and support towers shall not be artificially lighted except as required by the Federal Aviation Administration or other governmental agency.
- e. Signs, symbols, flags, banners or other such devices or things may not be attached to, painted or inscribed on a wireless communication facility, except for signs with standard public safety warnings, contact information or similar signage.
- f. The applicant shall maintain and, if necessary, improve, the existing access to City standards. If there is no existing access, the applicant shall provide a paved access driveway a minimum of 10 feet wide to accommodate service vehicles.

J. Wireless Communication Facility Adjustment.

- 1. Applicability. Except as otherwise provided in this Section, a wireless communication facility shall not be used or developed contrary to any applicable development standard unless an adjustment has been granted pursuant to this Section. These provisions apply exclusively to wireless communication facilities and are in lieu of the generally applicable variance provisions in LDC Chapter 16.71.
- 2. Procedure Type. A wireless communications facility adjustment is a Type II procedure.
- 3. Submittal Requirements. In addition to the general submittal requirements for a Type II application, an application for a wireless communication facility adjustment shall include:
 - a. A written statement demonstrating how the adjustment would meet the criteria.
 - b. A site plan that includes:
 - (i) Description of the proposed facility's design and dimensions, as it would appear with and without the adjustment.
 - (ii) Elevations showing all components of the wireless communication facility as it would appear with and without the adjustment.
 - (iii) Color simulations of the wireless communication facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the adjustment.
- 4. Criteria. An application for a wireless communication facility adjustment may be granted if the following criteria are met:
 - a. The adjustment is consistent with the purpose of the development standard for which the adjustment is sought.
 - b. Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.
 - c. The applicant demonstrates the existence of either of the following:
 - (i) Gap in Service.
 - (A) A gap in the coverage, capacity, or technologies of the service network exists;
 - (B) The gap can only be filled through an adjustment in one or more of the standards in this Section; and
 - (C) The adjustment is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this Section's standards to the greatest extent possible.
- 5. Minimization of Impacts. The adjustment must minimize or eliminate negative impacts to surrounding properties and uses through by utilizing existing site characteristics including but not limited to the site's size, shape, location, topography, improvements, and natural features. Negative impacts are minimized or eliminated if there is:
 - a. A decrease in negative visual impacts, including, but not limited to, visual clutter;
 - b. Better preservation of views or view corridors; or

c. A decrease in any other identifiable negative impacts to the surrounding area's primary uses.

K. Special Provisions

1. Temporary facilities. In order to facilitate continuity of services during maintenance or repair of existing facilities or prior to completion of construction of a new facility, temporary wireless communication facilities are allowed through administrative review. Temporary facilities authorized under this subsection may not be used in excess of ninety (90) days, may not have a permanent foundation and shall be removed within thirty days after the permanent facility is completed. A permit for a temporary facility under this subsection may not be renewed or extended, nor may a new permit be issued for the same facility within the succeeding six months after the expiration of the initial permit.

2. Third-party review and associated fees. The City may engage a third-party expert to review evidence presented by an applicant under this Section to demonstrate compliance with this Section as to the infeasibility of collocation or the need to fill a service gap. The City Council may establish reasonable fees in amounts sufficient to recover all of the City's costs to retain such consultants.

3. Issuance of Building Permit. No building permit shall be issued for the construction of a wireless communication facility until the application for the specific type of siting has been approved, including any local appeal.

4. Exception for Public Utilities. Nothing in this Section shall be deemed to prohibit a public utility, as defined in ORS 757.005 from installing or constructing a new utility structure, or enlarging, expanding, or reconstructing an existing utility structure in right-of-way, if the installation, construction, enlargement, expansion, or reconstruction of the utility structure would otherwise be permitted under law and the utility can demonstrate that the need for the new utility structure is not related to or created by a wireless communication facility.

5. Relocation.

a. The City may require a wireless communication facility located in the right-of-way to be relocated when the public convenience requires the relocation, and the expense thereof shall be paid solely by the owner of the wireless communication facility.

b. Prior to requiring relocation, the City will provide the owner with notice substantially similar to that given to franchisees, licensees, or grantees.

c. Should an owner fail to remove or relocate the wireless communication facility or facilities by the date stated in the notice, the City may cause removal or relocation of the wireless communication facility or facilities, and the expense thereof shall be paid by the owner, including all enforcement and other costs incurred by the City due to the owner's failure to remove or relocate the wireless communication facility or facilities.

d. If an owner must relocate its wireless communication facility or facilities in the right-of-way as the result of a request by the City, the City will make a reasonable effort to provide the owner with an alternate location for the relocated facility.

6. Measurements. Unless otherwise specified in this Section, all references to existing, allowed or modified height in this Section are measured from the original grade at the base of the wireless communications facility as originally approved to the highest point on the wireless communication facility, including all antennas approved prior to February 22, 2012, and excluding any lightning rods.

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LAND CONSERVATION
AND DEVELOPMENT

Plan Amendment Specialist – Angela Houck
Dept. of Land Conservation & Development
635 Capital Street NE, Suite 150
Salem, OR 97301-2540