



Kelso Planning Commission
Agenda
Regular Meeting at 6:00p.m.
Tuesday, November 10, 2015
City Hall Council Chambers, 203 S. Pacific Ave.

Agenda	Approved/ Denied	Remarks
Call to Order: 1. Roll Call.		
Approve Minutes: 1. October 13, 2015 Regular Meeting minutes.		
Presentation:		
Public Hearing: 1. Proposed amendments to City Development Regulations to address recent changes in state and federal law, particularly, as it relates to manufactured housing, recreational vehicles, wireless communication facilities, and temporary encampments for the homeless sponsored by religious organizations.		
Action/Motion Items: 1. Recommendation to council on draft amendments to Kelso Municipal Code Title 17: a. WCIA Draft Ordinance with Exhibits A & B b. Wireless Facilities Draft Ordinance with Exhibit A		
Citizen Business:		
Commission Business: 1. Shoreline Master Program status update 2. Downtown Design Standards Discussion		
Adjournment: 1. Next regularly scheduled meeting December 8, 2015.		

City of Kelso Community Development Department (360) 423-9922.
 The agenda can be found on the Kelso website at <http://www.kelso.gov/planning-commission/agendas>.



**Kelso Planning Commission
Meeting Minutes
Tuesday, October 13, 2015
5:58 pm – 7:01 pm**

Commissioners Present: Rick VonRock, James Webb, Daniel Graves.

Commissioners Absent: Clark Hislop, Charles Hendrickson.

Staff Present: Michael Kardas, Community Development Director; Amy Mullerleile, Recording Secretary.

Call to Order:

Chair Rick VonRock called the meeting to order at 5:58 pm.

Minutes:

Commissioner Webb made the motion, seconded by Commissioner Graves to approve the minutes of September 8, 2015. Motion carried, all in favor.

Commission Business:

The City's planning consultant, Gregg Dohrn, provided the commission with some background information on several updates to the land use code that are required by the City's insurance provider to bring the code into compliance with recent changes to state and federal laws.

Mr. Dohrn described the changes needed to be in compliance with state law regarding manufactured housing, recreational vehicles and mobile homes, and religious organizations hosting temporary homeless encampments. There was discussion regarding the contents of the cited state laws. Mr. Dohrn will look into time limits for RV's parked outside of designated locations as well as what is considered "human habitation". Commissioner Webb asked that the provision regarding mobile homes and recreational vehicles use the language referenced in the RCW and the provision regarding manufactured housing reference the building code. Commissioner VonRock asked if the state law describes what is considered temporary in reference to religious organizations hosting temporary homeless encampments; Mr. Dohrn reported that the law does not specify.

There was discussion regarding the changes needed to be in compliance with federal law as it relates to modifications to existing wireless communication facilities that do not constitute a significant change. Mr. Dohrn explained that more changes will be needed to this section as the City's development codes continue to be updated but it is important to be in compliance with the requirements of the City's insurance provider before the end of 2015. All of these changes will be incorporated into the new regulations.

Mr. Dohrn then introduced proposed language regulating home businesses which include using the term business instead of occupation, signage, permitted businesses and non-permitted businesses. He explained that the proposed language included a list of exempt activities that would be changed to describe alternative regulations associated with those specific activities.

Mr. Dohrn discussed proposed language regulating livestock. An error was noted that will be changed to read that no more than two geese will be allowed in the RSF-5 and RSF-10 zones. There will also be a stipulation added that requires all lots with livestock to also have a residence.

Commission Business:

Commissioner VonRock asked Mr. Kardas if there were any new development applications. Mr. Kardas responded that there has been some interest in south Kelso as well as at the mall property.

Adjournment:

There being no further business, Commissioner Webb made the motion, seconded by Commissioner Graves to adjourn at 7:01 pm.

Rick VonRock, Planning Commission Chair

Respectfully submitted: Amy Mullerleile, Recording Secretary

PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN that an open record public hearing is scheduled before the Kelso Planning Commission, Tuesday, November 10, 2015, at 6:00pm in the City Hall Council Chambers, 203 S. Pacific Avenue, Kelso, WA 98626.

The hearing will allow the city to receive comments on the proposed amendments to City Development Regulations to address recent changes in state and federal law. The amendments include provisions to more clearly permit mobile home and RV's for human habitation in approved mobile home or RV parks in accordance with the provisions of state law including RCW 35.21.684; more clearly provide that new manufactured housing shall be permitted in all zones where single family residences are permitted; update the City's regulations governing the collocation, removal, and repair of wireless communication facilities in accordance with recent changes to federal law; and a provision to permit religious organizations to host encampments for the homeless on a temporary basis in accordance with the provisions in RCW 36.01.290.

If you have any questions, please contact Michael Kardas, Kelso Community Development Director at (360) 577-3376.

The Council Chambers room is handicap accessible. Arrangements to reasonably accommodate special needs, including handicap accessibility or interpreter, will be made upon receiving 24-hour advance notice. Contact the City Clerk's office at (360) 423-0900.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON
AMENDING KELSO MUNICIPAL CODE CHAPTER 17.15.**

WHEREAS, the City of Kelso has adopted and is implementing official land use controls in accordance with the provisions of the Kelso Comprehensive Plan and the laws of Washington State; and

WHEREAS, the Washington Cities Insurance Authority (WCIA) periodically conducts a review of the Kelso Municipal Code to make sure that the City's regulations are consistent with the most recent provisions of state law; and

WHEREAS, WCIA has requested that the City review the provisions of the Kelso Municipal Code and make changes, as appropriate, so that the City's Development Regulations are consistent with recent legislative enactments, particularly as it relates to manufactured housing, recreational vehicles, and temporary encampments for the homeless sponsored by religious organizations; and

WHEREAS, the City in consultation with WCIA has identified several appropriate revisions to the Kelso Municipal Code; and

WHEREAS, the City in conducting the WCIA review also identified a few typographical errors in the codified version of the Kelso Municipal Code that need to be corrected; and

WHEREAS the City Council finds that the health safety and welfare of the community is best served by these amendments to the Kelso Municipal Code; and

WHEREAS, the SEPA Responsible Official issued a threshold decision for this draft ordinance on _____, which was not appealed; and

WHEREAS, the Planning Commission held a public hearing on the draft amendments to the Kelso Municipal Code _____; and

WHEREAS, the Planning Commission recommended approval of the draft amendments to the City Council; and

WHEREAS, on _____, the City Council considered the draft amendments to the Kelso Municipal Code during its regular meeting; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN
AS FOLLOWS:**

SECTION 1. Findings Adopted. The City Council adopts all of the ‘WHEREAS’ sections of this Ordinance as findings in support of this ordinance.

SECTION 2. KMC Section 17.15.020 Amended. Kelso Municipal Code Section 17.15.020 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

SECTION 3. KMC Section 17.15.040 Amended. Kelso Municipal Code Section 17.15.040 is hereby amended as set forth in Exhibit B, attached hereto and incorporated fully by this reference.

SECTION 4. Corrections. Upon approval of the City Attorney, the City Clerk and code reviser are authorized to make necessary corrections to this ordinance, including without limitation the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

SECTION 5. Severability. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2015.

MAYOR DAVID FUTCHER

ATTEST/AUTHENTICATION:

APPROVED AS TO FORM

CITY CLERK

CITY ATTORNEY

PUBLISHED:_____

Exhibit A
Kelso Municipal Code 17.15.020
With October 2015 Amendments Highlighted in Underline and Strikeout Format

17.15.020 Land use table.

The following Table 17.15 indicates those uses which may be permitted through Type I, II or III review in the various zoning districts defined in this title. In addition to Table 17.15, reference to the individual zoning districts and, where indicated, the regulatory notes of Section 17.15.030 (Footnotes) and definitions of Chapter 17.08, is necessary in order to determine if any specific requirements apply to the listed use.

- A. If no symbol appears in the box at the intersection of the column and row, the land use is not allowed in that district.
- B. Use classifications are listed on the vertical axis and city of Kelso zoning districts are shown on the horizontal axis.
- C. If a number appears next to the review classification symbol at the intersection of the column and row then that use is subject to special standards listed as footnotes following Table 17.15 in Section 17.15.030.
- D. If a letter appears adjacent to the use classification that land use is subject to performance standards listed in Section 17.15.040. These standards are in addition to other applicable standards of the Kelso Municipal Code.

Table 17.15

Table 17.15 Allowable Land Uses	Residential Single- Family	Residential Multifamily	Open Space	Commercial—Town Center	Commercial—West Kelso	Commercial Neighborhood Service Center	Commercial Specialty Retail and Services	Commercial—Major Retail	Industrial Light Manufacturing	Industrial General Manufacturing
	RSF	RMF	OP N	CTC	CWK	CNH	CSR	CMR	ILM	IGM
RESIDENTIAL										
Single-family residence (A, L)	I	I ₁		I ₁	I ₁	I ₁	I ₁	I ₁		
Duplex (L)	I ₂	I ₃		I	I					
Multiple-family dwellings, including rooming and boarding houses, triplexes, fourplexes, condominiums, apartment houses and apartment courts		I		I ₄	I ₄	I ₄	I ₄	I ₄		
Day care family home* (D)	I	I								
Day care mini-center* (D)		I								
Day care—adult* (D)	II	II								
Adult family home	II	II		I ₁	I ₁	I ₁	I ₁	I ₁		
Expansion and/or reconstruction of a residence	I	I	III							
Mobile home parks and subdivisions (B)		II								
Livestock* (R)	I ₁₆									
Accessory apartment* (T)	II									
Temporary manufactured home for aged relative (U)	II									
AMUSEMENT AND RECREATION										
Recreation facilities, active*	II	II	III ₁₈	I ₅	I	I	I	I	II	II
Recreation facilities, passive*	I	I	I							
Participant sports and recreation—indoor				III ₅	I	I/II ₇	I	I	II	
Participant sports and recreation—			III ₁₈		II		II	I		

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	RSF	RMF	OP N	CTC	CWK	CNH	CSR	CMR	ILM	IGM
outdoor										
Trails			I							
Wildlife and nature preserves			I							
COMMUNITY SERVICES										
Art galleries, noncommercial	II	II								
Auditoriums, clubhouses, meeting halls				II ₅	I		I	I		
Community centers	II	II		II ₅	I	I	I	I	I	I
Educational, cultural, or governmental	II	II		II	I	III	I	I	II	I
Health care facilities*	III	III		II	I	I ₇	I	I		
Clinics—walk in*				II	II	I	I	I		
Hospital	III	III				III				
Marinas, boardwalks, public piers				I	I		I	I		
Museums	III	III		II	II					
Assisted living home*	II	II				II				
Post office				I						
Religious facilities	II	II		II ₅	II	II ₇	II	II	II	II
Social and fraternal clubs and lodges		II ₆		II	II					
Group home* (D)	II	II								
Halfway house* (D)	II	II		II ₅						
Day care center* (D)	II	II		I ₅	II	II	II	II	II	
Temporary Encampment for the Homeless (W)	III	III		III	III	III	III	III	III	III
Transitional housing*— Facilities serving less than 10 clients (C)	II	II		II ₅						
Transitional		III		III	III		III			

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housing*— Facilities serving 10 or more clients(C)										
Emergency shelter*(C)				III	III					
Urban rest stop*(C)				III	III					
MANUFACTURING										
Agriculture* including agricultural processing									II	I
Fabrication, manufacture, assembly, processing, packaging, repair, servicing of goods									I ₉	I ₉
Any principally permitted use whose operations are predominantly out-of-doors rather than completely enclosed within a building									II	I
Aquaculture			II							
Commercial indoor storage									I	I
Commercial moving and freight terminals									II	I
Computer and electronic equipment and products									I	I
Food products									I	I
Furniture and fixtures									I	I
Junk or salvage yards										I
Laboratories for scientific research, testing and experimental development that can be performed with minimal adverse impact on, and pose no special									I	I

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hazard to, the environment and the community										
Marijuana producer, processor									I ₂₀	I ₂₀
Mechanical, automotive, trucking, agricultural/forestry and contractors' or builders' equipment and supplies									I	I
Marine-oriented commercial and industrial activities									II ₁₀	II ₁₀
Microbrewery*				II _{5, 7}			II	II	II	II
Printing and publishing									I	I
Recycling centers						II	II		I	I
Sales of items manufactured on site									II	II
Skating rink— indoor								II	III	III
Vehicle towing and storage services									II	II
Vocational schools									I	I
Winery/brewery									I	I
Wood products									I	I
RETAIL TRADE AND SERVICE										
Automobile sales— new or used					I		I	I	II	
Bed and breakfast*	II	II		II ₁	I	I	I	I		
Brewpub				I	I	I	I	I		
Cart vendors				I	II	II	II	I	I	II
Cemeteries, mausoleums and columbaria	III	III								
Convenience stores including gasoline sales and/or a car wash facility					II	II	I			
Crematorium	III	III								

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	RSF	RMF	OP N	CTC	CWK	CNH	CSR	CMR	ILM	IGM
Entertainment (e.g., theaters, video game arcades, etc., except adult motion picture theaters and other uses as described in Section 17.30.040, Adult oriented business (AOB) overlay zone)				I ₇	I	II	I	I		
Farmer's market				I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇		
Fitness center/sports club				II	II	II	I	I	II	
Formula take-out food restaurant with drive-through					I		I	I		
Formula take-out food restaurant without drive-through				I ₇	I		I	I		
Hotels, motels, inns*				I ₇	I		I	I		
Home occupation, major* (G, H)	II	II								
Home occupation, minor* (F, H)	I	I								
Kennels* (V)					II		II	II	II	
Minor vessel repair shop						I	I		I	I
Mixed commercial/residential		III		I _{4,7}	I ₄	I ₄	I ₄	I ₄		
Mortuaries, funeral homes and funeral chapels	III	III		II _{5,7}	II		II			
Personal services*				I _{5,7}	I	I	I	I		
Pet shop*				I	I	I	I	I		
Professional offices		III		I ₇	I	I	I	I	II ₈	I ₈
Restaurants				I ₇	I		I	I	II ₁₁	II ₁₁
Retail sales marijuana									I ₂₀	I ₂₀
Retail sales and services with drive-through businesses* (I)					I		I	I	II	

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	RSF	RMF	OP N	CTC	CWK	CNH	CSR	CMR	ILM	IGM
Retail sales and services without drive-through businesses				I _{7, 12}	I	I ₇	I	I		
Retail sales and services with screened outdoor storage				II _{5, 7}	II		II	II	I	I
Roadside stands				I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇		
RV sales, storage and repair									I	I
Secondhand/consignment stores				I _{7, 12}	I	I ₇	I	I		
Sexually oriented business* (E)										
Small engine repair						I	I		I	
Taverns				I ₇	I		I	I		
Uses which service the automobile (e.g., gasoline service station, car wash, minor/major vehicle repair shops)					II	I ₁₃	I	I	I	
Veterinarian clinics* (V)						I ₇	II	II		
Caretaker residence (K)									I	I
Temporary uses (S)	I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇	I ₁₇
Wholesale sales with limited retail sales							II	II	II	
TRANSPORTATION										
Park and ride lots*					II	II	I	II		
Park and ride lots, shared use*	II	II							II	I
Parking as principal use				II	I		I	I	II	I
Transit facilities				I ₁₄						
UTILITIES										
Public and private utility buildings and structures (E) (J)	II	II	II	II	II	II	II	II	II	II
Communication	I	I	I	I	I	I	I	I	I	I

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	RSF	RMF	OP N	CTC	CWK	CNH	CSR	CMR	ILM	IGM
antennas, category 1 (N)(X)										
Communication antennas, category 2 (O)(X)	II		II	I	I	I	I	I	I	I
Communication antennas, category 3 (P)(X)			II		II		II	II	I	I
Communication towers and monopoles (Q)(X)			II ₁₉		II ₁₉		II ₁₉	II ₁₉	II ₁₉	II ₁₉
WHOLESALE TRADE—STORAGE										
Self-service storage facilities; provided, that no outside storage is visible from adjoining properties and public rights-of- way						III			I	
Warehousing (wholesale, bulk retail and trade)								III		

I = Type I Permitted Use

II = Type II Administrative Use

III = Type III Conditional Use

* = Defined Term

Letters and numbers refer to footnotes and regulatory notes within Sections 17.15.030 and 17.15.040.

(Ord. 3828 § 4 (Exh. B), 2014; Ord. 3821 § 4 (Exh. B), 2014; Ord. 3799 § 1 (Att. B), 2013; Ord. 3771 § 1 (Exh. A), 2012; Ord. 3745 § 1 (Att. B), 2011; Ord. 3699 § 1 (Att. B), 2009)

Exhibit B
Kelso Municipal Code 17.15.040
With October 2015 Amendments Highlighted in Underline and Strikeout Format
October 20, 2015

17.15.040 Regulatory notes.

The following regulatory notes apply to the corresponding uses listed in Table 17.15:

A. Single-family dwellings shall be constructed consistent with the following standards:

1. Only one dwelling unit allowed per legal parcel, ~~unless otherwise noted.~~
2. Shall have a width of not less than 14 feet at the narrowest point of the first story (excluding architecturally designed entrance ways).
3. Attached garages shall be placed in the rear of the lot if at all possible.
4. ~~Trailers, recreational vehicles or tents~~ may not be used for human habitation or dwelling purposes.
5. Recreational vehicles may be used for human habitation in approved RV parks and in manufactured/mobile home communities in accordance with the provisions of state law, including RCW 35A.21.312, provided that:
 - a. Each RV must contain at least one internal toilet and one internal shower, or the RV park or manufactured/mobile home community must provide toilet and showers; and
 - b. Utility hookups must comply with all federal, state, and local standards.
6. Mobile homes may be used for human habitation in manufactured/mobile home communities legally in existence prior to June 12, 2008 in accordance with the provisions of state law, including RCW 35A.21.312.
7. New manufactured housing conforming to the standards of 42 U.S.C. Sec. 5401-5403, as amended, shall be permitted in all zones where single family residences are permitted, provided that:
 - a. Homes shall be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground shall be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;
 - b. The new manufactured home shall comply with all local design standards applicable to all other homes in the neighborhood;
 - c. The new manufactured home shall be thermally equivalent to the state energy code; and
 - d. The new manufactured home meets all other requirements for a manufactured home as defined in RCW 35.63.160.

B. Mobile home parks and subdivisions are subject to the following standards:

1. The minimum site requirements for expansion of existing and proposed mobile home subdivisions are as follows:
 - a. Minimum zoning area: three acres;
 - b. Density: as determined by the underlying zoning density requirement.
2. No building or structure in a mobile home park or subdivision shall exceed the building height restrictions set forth for single-family residential dwelling units.

3. Every mobile home park and subdivision locating within the city shall be connected to city sanitary sewers. This standard applies to any expansion of existing parks or subdivisions and to all proposed mobile home parks and subdivisions.
4. Every mobile home park and subdivision, and/or expansion of the same, locating within the city shall be connected to the city water supply system.
5. Every mobile home park and subdivision, and/or expansion of the same, locating within the city shall supply the necessary public power utilities to each and every unit proposed therein. Such utilities shall be placed underground except in those situations where this could be proven to be dangerous to humans and animals.
6. All mobile home parks and subdivisions, and/or expansion of the same, shall submit, along with accompanying site development plans, proof of compliance with provisions for flood hazard protection as set forth in Sections 18.12.210 through 18.12.310.
7. Not less than ten percent of the total gross buildable area of the park or subdivision shall be designed and maintained as a recreational area for the occupants of the park or subdivision. The location of the recreation area will be in a safe and secure area of the park or subdivision and separated from passing automobile traffic by a cyclone fence not less than four feet in height as measured from ground level.
8. Setbacks in all mobile home parks and subdivisions shall be as follows:
 - a. Mobile Home Parks.
 - i. Front setback: ten feet from front property line;
 - ii. Side setback: five feet, including carports, garages and accessory buildings;
 - iii. Rear setback: ten feet from rear property line.
 - b. Mobile Home Subdivisions.
 - i. Front setback: twenty-five feet from front property line or fifty-five feet from street centerline, whichever is greater;
 - ii. Side setback: five feet from each side property line;
 - iii. Rear setback: fifteen feet from rear property line.
 - c. All setbacks shall be measured from the nearest corner or wall to the appropriate property or site line.
9. Permanent structures located within any mobile home space shall be used for storage only, have a maximum area of thirty-five square feet, and shall be located not less than six feet from any mobile home.
10. All mobile home park and subdivision streets and rights-of-way shall conform to the standards set forth in Title 16.
11. Access driveways shall be provided to each mobile home space and shall have a minimum width established by the city engineer:
 - a. No access driveway or curb cut providing ingress or egress to a mobile home park or subdivision shall be located closer than fifty feet from any public street intersection, as measured from the street right-of-way lines at the nearest side of the intersection;
 - b. Access drives and walkways within the park or subdivision shall be hard surfaced according to the specifications established by the city engineer.

C. Halfway houses, group homes, transitional housing, emergency shelters, and urban rest stops are subject to the following standards:

1. One off-street parking space is required for each on-shift, nonresidential employee in addition to the residential parking requirements. Residential driveways are acceptable access ways.
2. Access streets, parking and/or loading areas shall be sufficient to safely accommodate the number of estimated vehicle trips generated by the use.
3. No structured area for active play or play structures may be located in the front yard. In the event of double frontage or similar situations, the director or designee shall determine which yard would have the least visual impact to the neighborhood.
4. The site shall conform to the lot size, building size, setback and lot coverage requirements of the zoning district.
5. Provide an off-street drop-off/pick-up area.
6. Comply with all business licensing requirements.
7. No structural or decorative alteration is permitted in a residential zone if that alteration changes the residential character of an existing residential structure or is incompatible with surrounding residences.
8. An on-site vehicle turnaround, or separate entrance and exit points, and passenger loading area must be developed for review and approval by the city engineer.
9. The site must be landscaped in a manner compatible with adjacent residences in residential zones according to a plan approved by the community development department.
10. The following additional criteria shall govern the review and approval of a conditional use permit for transitional housing, emergency shelters and urban rest stops:
 - a. Site Plan. A detailed site plan shall be submitted with the application. The examiner may increase the development standards of the Kelso Municipal Code as necessary to ensure compatibility of the use with surrounding uses. The examiner shall take into consideration the neighborhood character and any adopted neighborhood plans.
 - b. Compliance with Building Code. Facilities must comply with all applicable standards, including International Building Code (IBC) standards for the number of residents or clients served. Adequate kitchens, bathrooms, lighting, safety features, and site access for emergency vehicles are required.
 - c. Separation. Facilities must be at least one-half mile from the same uses.
 - d. Drugs and Alcohol. Use of alcohol and controlled substances, except by prescription, is strictly prohibited at the premises.
 - e. Operations. Applicant must provide staffing and operating procedures adequate to the type of facility and adequate to address the secondary impacts of the facility.

D. Day care centers (all types) shall meet the following standards:

1. Within residential districts a sight-obscuring fence of at least four feet in height as approved by the review authority shall be provided to separate any outdoor play area from adjoining lots.
2. Structure(s) shall meet building, sanitation, health, traffic safety and fire code requirements.

3. A minimum of one off-street parking space shall be provided for each on-shift employee plus one space per twelve persons served.

4. An on-site vehicle turnaround, or separate entrance and exit points, and passenger loading area must be provided. The city shall specifically consider the location and appearance of the proposed turnaround or access in determining compatibility with surrounding uses.

5. A day care center shall not be located within three hundred feet of another day care center, except for any day care center that is an accessory use in a community service facility, as described in subsection D7 of this section.

6. No day care center shall be located in a private family residence unless the portion of the residence where the children have access is used exclusively for the children during the hours the center is in operation, or is separate from the usual living quarters of the family.

7. A day care center, if sited on the premises of an operating community service facility, such as a private or public school, place of worship, community center or library, and associated with that activity, shall be considered accessory to the principal use of the property concerned.

E. Sexually oriented businesses are only permitted in accordance with the provisions of Section 17.30.040.

F. Minor home occupations shall meet all of the following criteria:

1. Minor home occupations are limited to those of a service character, but may include limited retail sales directly related to the home occupation.

2. Minor home occupations shall be conducted within the dwelling unit and/or attached garage by members of the family residing in the dwelling only.

3. There shall be no outside storage of materials, supplies, or display of goods or equipment of any kind related to the minor home occupation, except for one commercial vehicle as it pertains to the home occupation.

4. Any need for any customer parking created by the home occupation shall be provided off street, in a location other than the required front yard setback.

5. No on-street parking of commercial vehicles is allowed and adequate driveway parking space or abutting on-street parking shall be required to accommodate peak traffic expectancy.

6. With the exception of existing driveways, no parking shall be allowed in setbacks or buffers.

7. Hours of operation shall occur between 7:00 a.m. and 10:00 p.m.

8. There shall be no exterior evidence of the home occupation, other than a permitted sign, that would cause the premises to differ from its residential character (e.g., outward physical appearance; lighting; the generation/emission of noise, fumes, or vibrations as determined by the administrative official using normal senses and from any lot line; create visible or audible interference in radio or television reception or cause fluctuations in line voltage outside the home occupation; or on average increase vehicular traffic by more than two additional vehicles at any given time).

G. Major home occupations shall meet the following requirements:

1. Major home occupations may include services, small-scale retail sales of products, mail order businesses and storage of materials associated therewith.

2. Major home occupations shall be conducted by members of a family residing in the dwelling, except the administrative official may authorize the family to employ a limited number of nonresident individuals to assist with the home occupation on a case-by-case basis.

3. A major home occupation may be conducted within the dwelling unit, attached garage, or a detached garage only. The outward appearance shall be secondary and subordinate to the primary use of the property and the purpose of the zoning district. There shall be no exterior evidence of the home occupation, other than a permitted sign, that would cause the premises to differ from its residential character: (e.g., lighting; the generation/emission of noise, fumes, or vibrations as determined by the administrative official using normal senses and from any lot line; create visible or audible interference in radio or television reception or cause fluctuations in line voltage outside the home occupation; or on average increase vehicular traffic by more than two additional vehicles at any given time).

4. There shall be no outside storage of materials or supplies, or display of goods or equipment of any kind related to the home occupation, except one commercial vehicle as it pertains to the home occupation and employee parking.

5. Any need for customer or employee parking created by the home occupation shall be provided off street, in a location other than the required front yard setback.

6. No on-street parking of commercial vehicles is allowed and adequate driveway parking space or abutting on-street parking shall be required to accommodate peak traffic expectancy.

7. With the exception of existing driveways, no parking shall be allowed in setbacks or buffers.

8. Hours of operation shall occur between 7:00 a.m. and 10:00 p.m.

H. Uses Not Permitted as Home Occupations. The following uses, by the nature of their operation or investment, have a pronounced tendency, once started, to increase beyond the limits permitted for home occupations, interfere with or impair the use and value of adjoining properties, or violate the restriction of no exterior evidence (e.g., outward physical appearance; outside storage of materials, supplies or vehicles; generation of noise, dust, fumes, odors, electrical interference, vibrations, excessive traffic, etc.). Therefore, the uses listed below shall not be permitted as home occupations:

1. Beauty salons and barber shops with more than one chair;
2. Gift, craft, secondhand stores;
3. Kennel;
4. Large item repair, including stoves, refrigerators, washers and dryers, etc.;
5. Towing services;
6. Trucking businesses or storage, except for the parking or storage of one commercial vehicle used solely by the owner/operator residing on the premises;
7. Veterinarian clinic;
8. Cabinet making, woodworking or carpentry shops;
9. Antique shops;
10. Health salons, spas, gymnasiums, martial arts schools, dance studios, aerobic exercise studios;
11. Machine and sheet metal shops;
12. Motor vehicle, trailer or boat maintenance, repair, detailing, paint, and body shops;
13. Taxidermist;

14. Upholstering;

15. Taxi services.

I. Drive-in businesses require a minimum number of off-street queuing spaces to minimize traffic hazards, pedestrian-vehicle conflicts, and the disruption of the commercial area street front.

1. Drive-in businesses shall provide queuing spaces according to the following requirements:

- a. Banks with drive-in facilities shall provide a minimum of five queuing spaces per lane when the number of lanes does not exceed two.
- b. Banks with three or more drive-in lanes shall provide a minimum of three queuing spaces per lane.
- c. Car washes shall provide a minimum of six queuing spaces.

2. If the drive-in bank or car wash is located along either a principal arterial, a minor arterial or along a street with only one lane for moving traffic in each direction, the city engineer shall determine whether additional queuing spaces are necessary or whether access should be restricted.

3. The city engineer shall establish the minimum number of queuing spaces needed for similar uses that are not listed above, using the quantities of subsection I1 of this section as a guide.

J. Public utility buildings, sewage pumping stations, electrical distribution substations and similar developments necessary for the operation of utilities shall comply with the following requirements:

1. If the installation is housed in a building, the building shall conform architecturally with surrounding buildings or the type of buildings that are likely to develop in the use district;
2. Any unhoused installation on the ground, or housed installation that does not conform to the architectural requirements of subsection J1 of this section, shall be surrounded by sight-obscuring plantings;
3. An unhoused installation of a dangerous nature, such as an electrical distribution substation, shall be enclosed by a cyclone security fence at least six feet in height;
4. All buildings, installations and fences shall observe the yard requirements for buildings in the district in which they are located, except that in residential use districts, the side yards shall each be not less than twenty-five feet in width.

K. Caretakers' and/or owners', operators' residences are limited to one per parcel and are only permitted where there is a principal use on the subject parcel.

L. Accessory buildings and structures shall not occupy any lot independent of the main building or structure. No permits will be issued for detached accessory buildings or structures unless a permit is also issued at the same time for the main building on the lot. No manufactured home, mobile home, trailer, bus, shipping container or railroad car may be stored, or converted to or used as a storage building, accessory building or for any other nonresidential use. No detached accessory building or structure may occupy the front of any lot.

M. Social Card Rooms. The location of any licensed gambling activity authorized by RCW 9.46.0282 as it now exists or is hereafter amended is prohibited within three thousand five hundred feet of the location of any other such gambling activity. Likewise, no such gambling activity shall be located on the same arterial street as any other such gambling activity. In addition to the foregoing, any establishment where such gambling activity is to be engaged in shall be subject to the issuance of a conditional use permit in accordance with established procedures.

N. Wireless communication facility category 1 is subject to the following standards:

1. The use shall be located on buildings or other structures. The facility category 1 may be located on buildings and structures that contain mixed uses.
2. Antennas equal to or less than four feet in height and with an area of not more than five hundred eighty square inches in the aggregate (e.g., fourteen-inch diameter parabola or 2.6-foot by 1.5-foot panel) are exempt from the height limitation of the zone in which they are located. (For example, in some zones the maximum height of a building is thirty-five feet. A facility 1 can go up to thirty-nine feet and still be within the height limit.) Placement of a facility category 1 antenna or related components on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
3. The shelter or cabinet used to house radio electronics equipment must be concealed from view and/or camouflaged. This can be accomplished through landscaping or other screening and through the use of compatible building materials.
4. In single-family residential areas, a facility 1 shall be separated from any other facility 1 by a distance equal to or greater than five hundred linear feet.
5. The facility category 1 antenna and components shall be the same color as the existing building, pole or support structure on which they are to be located.
6. A building permit shall be required to construct a facility 1.
7. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof.

O. Wireless communication facility category 2 is subject to the following standards:

1. The facility category 2 antenna may be located on buildings and other structures.
2. The shelter or cabinet used to house radio electronics equipment must be concealed from view and/or camouflaged. This can be accomplished through landscaping, fencing or other architectural screening by using compatible building materials.
3. A facility category 2 antenna shall comply with the height limitation specified for all zones, except omnidirectional antennas may exceed the height limitation by twelve feet. The permitted antenna height includes the wireless communication support structure. Placement of a facility 2 antenna or related components on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
4. The facility category 2 antenna and components shall be the same color as the existing building, pole or support structure on which they are to be located.
5. A building permit shall be required to construct a facility 2.
6. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof.
7. Category 2 facilities may be allowed in residential zones through Type II review on buildings on lots used for nonresidential purposes.

P. Wireless communication facility category 3 is subject to the following standards:

1. The shelter or cabinet used to house radio electronics equipment must be concealed and/or camouflaged.
2. Facility category 3 shall comply with the height limitation specified for all zones, except as follows: Omnidirectional antennas may exceed the height limitation by fifteen feet. Placement of a facility 3 antenna or related components on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

3. The facility category 3 antenna and components shall be the same color as the existing building, pole or support structure on which they are to be located.

4. A building permit shall be required to construct a facility category 3.

5. Roof-mounted facilities must be set back a minimum of ten feet from the edge of the roof.

Q. Wireless communication facility monopoles and lattice towers shall comply with the following performance standards:

1. The maximum height of a monopole or lattice tower is sixty feet for one carrier or one hundred twenty feet if two or more carriers are located on the monopole or lattice tower. A permitted co-location monopole or lattice tower that does not have two or more carriers located on it for a period of one year or more shall be modified to conform to the single carrier height of sixty feet.

2. The lot on which the monopole or lattice tower is to be constructed must be legally conforming.

3. The facility must be screened in accordance with Chapter 17.40.

4. Monopoles and lattice towers located in the light manufacturing (ILM) zone must be set back a minimum of one hundred feet from any residentially zoned property. The minimum setback along I-5 and/or SR 432 is one hundred feet.

5. Antennas that extend above the wireless communication support structure shall not be calculated as part of the height of a monopole or lattice tower.

6. Colocation on an existing support structure is to be permitted. A facility 3 is the largest wireless communication facility allowed on a monopole or lattice tower.

7. The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole or lattice tower must be concealed and/or camouflaged through landscaping, fencing, or other screening using compatible building materials and colors.

8. A building permit shall be required to construct a monopole or lattice tower.

9. Antennas may not extend more than fifteen feet above their supporting structure, monopole, lattice tower, building or other structure. Site location and development shall preserve the preexisting character of the site as much as possible. Wireless communication towers and accessory equipment (equipment shelters and cabinets) shall be integrated through location, design, and color to blend in with the existing site characteristics to the extent practical. Existing vegetation around the facility shall be preserved or improved upon to provide vegetative screening. In the RSF-E zone, a minimum of two-thirds of the height of the monopole or lattice tower must be screened by existing vegetation when possible. Additional screening may be required by the community development director to mitigate visual impacts to adjacent properties or public rights-of-way as determined by site-specific conditions.

10. No equipment shall be operated above forty-five dBA as measured from the nearest property line on which the attached wireless communication facility is located.

R. Livestock are allowed within the RSF-15 zone subject to the following densities and standards:

1. Horses: One per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of two horses per lot; or

2. Cows: One per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of two cows per lot; or

3. Llamas: Two per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of four llamas per lot; or
4. Sheep: Four per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of eight sheep per lot; or
5. Goats: Four per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of eight goats per lot; or
6. Chickens: One rooster/six hens per eighty-seven thousand one hundred twenty square feet of lot area to a maximum of one rooster/six hens per lot; or
7. Pigeons: Twelve pigeons per twenty-one thousand seven hundred eighty square feet of lot area to a maximum of twenty-four pigeons per lot;
8. There must be a minimum distance of not less than forty feet between a building for human habitation and a structure housing livestock or poultry;
9. Livestock and poultry shall not be located any closer than one hundred feet from any residential building on an adjacent lot and no less than fifty feet from the property line of an adjacent vacant parcel capable of development. Confined feeding areas or structures to house livestock or poultry shall not be located closer than two hundred feet to any preexisting residence on adjacent properties.

S. Temporary Uses.

1. There are two types of temporary uses, seasonal and emergencies:
 - a. Seasonal uses are directed towards a special event or holiday such as:
 - i. Carnivals;
 - ii. Christmas tree sales;
 - iii. Farmer's markets;
 - iv. Festival or street fairs;
 - v. Parking lot/outdoor sales events;
 - vi. Seasonal sale of agricultural products grown off premises;
 - vii. A temporary sales office or mobile home in conjunction with a construction project; and
 - viii. Temporary fund-raising and other civic activities in commercial zoning districts.
 - b. Emergency uses are occasioned by an unforeseen event, such as fire, windstorm or flood, including:
 - i. A mobile home, recreational vehicle or other temporary structure for a residential purpose in a residential zone; or
 - ii. A mobile office or other temporary structure for a business purpose in a commercial or industrial zone.
2. Nothing within this section is intended to circumvent the strict application of those permitted uses within the underlying zoning districts. Time limits shall be strictly enforced.
3. All temporary uses addressed in this section shall be located on private property and not in the public rights-of-way.

4. Approval Criteria.

a. Seasonal and Special Events. The administrative official shall approve, approve with conditions or deny a request for approval of a special event subject to compliance with all of the following criteria:

- i. The event occurs for no longer than forty-five days in a calendar year on the approved event site;
- ii. The event is permitted in the underlying zoning district or within the approved event site;
- iii. The applicant has proof of the property owner's permission to place the event on his/her property;
- iv. There will be no parking utilized by the customers and employees of the temporary event which is needed by the property owner to meet his/her minimum parking requirements;
- v. The event does not interfere with adequate vision clearance, and shall not obstruct pedestrian access on public rights-of-way;
- vi. Conditions as may be required by the building official and/or fire marshal to determine compliance with minimum building, fire and life safety codes; and
- vii. Adequate provisions for trash disposal and sanitary facilities shall be provided.

b. Unforeseen Emergencies. The administrative official shall approve, approve with conditions or deny a request of an unforeseen/emergency situation(s) subject to compliance with all of the following criteria:

- i. The need for the use is the direct result of a casualty loss such as fire, windstorm, flood or other severe damage by the elements of a preexisting structure or facility previously occupied by the applicant on the premises for which the permit is sought;
- ii. There exists adequate and safe vehicular ingress and egress when combined with the other uses of the property;
- iii. There exists adequate parking for the temporary use;
- iv. The use will pose no hazard to pedestrians in the area of the use;
- v. The use will not create adverse off-site impacts including noise, odors, vibrations, glare or lights which will affect adjoining uses;
- vi. The use can be adequately served by sewer or septic system and water, if applicable; and
- vii. The length of time that the temporary building will be used is the maximum needed to address the hardship, but no longer than one year, with the exception that a temporary use approval may be renewed once by the administrative official for a period not to exceed one year.

5. The regulations in this section shall not apply to:

a. Garage/estate sales conducted on private residential properties subject to the following criteria:

- i. Sales last no longer than three consecutive days; and
- ii. Sales are held no more than four times in a calendar year; and
- iii. Sales are conducted on the owner's property. Multiple-family sales are permitted if they are held on the property of one of the participants.
- iv. No garage sale signage is allowed within the public right-of-way. Signs on private property must have the written permission of the property owner.

b. On-site construction office during the period of construction, but no longer than six months. A single six-month extension may be granted upon written request, provided the applicant shows good cause for granting the extension. The approved extension shall be the minimum necessary to achieve completion of the project.

T. Not more than one accessory apartment, as defined, may be allowed on a parcel. The following criteria shall apply:

1. The accessory apartment shall be located within an owner-occupied, site-built single-family dwelling or its accessory garage within fifty feet of the primary residence.
2. The accessory apartment shall not exceed eight hundred square feet and shall be reviewed to ensure compatibility with surrounding uses.
3. One additional paved, off-street parking space is required.
4. The accessory apartment shall share access with the primary dwelling.
5. Adequate utility service shall be confirmed.
6. A restrictive covenant shall be recorded on the property to preclude the separate sale or division of the accessory apartment from the single-family dwelling.

U. The following criteria shall govern the review and approval of a temporary manufactured home, or park model (defined in Section 17.08.020), for occupancy by an aged, infirm or incapacitated relative or by one or more relatives (by blood or marriage) engaged in care giving for the aged, infirm or incapacitated person:

1. Such temporary home shall only be considered on residential properties of two acres or greater;
2. Such home shall be for temporary placement for a period of one year, subject to review prior to renewal by the administrative official;
3. The aged, infirm or incapacitated person must be related by blood or marriage to the caregiver;
4. The property must be owned by either the caregiver or the aged, infirm or incapacitated relative;
5. Such temporary permit shall be issued only for the purpose of providing one temporary housing unit on the same lot as the existing residence, in reasonably close proximity to each other, with the intent of sharing utility systems and to minimize negative effects on adjacent uses;
6. If more than one residence already exists on the property, the reviewing official shall not issue a permit for a temporary unit under this section;
7. Seventy-five years of age is considered aged for purposes of this section. Individuals less than seventy-five years of age shall be required to furnish a written statement by a licensed medical doctor or osteopath, indicating that the patient is not physically or mentally capable of independent living and is dependent on a relative being close by for personal physical care assistance;
8. The caregiver shall be physically capable of providing the needed personal physical care;
9. Financial hardships, taking care of the property and other convenience arrangements not relating to age or infirmity shall not be considered grounds for which a permit can be issued;
10. Sewage disposal shall be by connection to the existing sanitary sewer outlet located on the property. No additional side-sewer connections to the collector line shall be permitted, unless required otherwise by the city engineer;

11. The temporary unit shall conform to setback requirements of the Kelso Municipal Code, and shall not be permitted within the one-hundred-year floodplain or other critical area;
12. Temporary manufactured homes shall meet the following siting requirements:
 - a. Have permanent steps or inclined planes affixed to all entrances;
 - b. Maintain a minimum eighteen-inch crawl space under the entire unit;
 - c. Have permanent skirting or sidewalls installed to enclose all areas between the lower edge of the outside walls and the ground;
 - d. Be placed and anchored per the manufacturer's installation instructions or per the design of a professional engineer or architect licensed in Washington (WAC 296-150M-610(1)(C));
13. If the placement of the temporary home would violate the provisions of any deed restriction or subdivision covenant for the property, the application shall be returned or denied without prejudice until the covenant issue is resolved;
14. No additional road approaches, access roads or accessory structures to serve the temporary residence shall be permitted, unless determined to be acceptable by the city engineer, as appropriate. The temporary unit shall be located within one hundred feet of the existing residence on the property unless this would conflict with subsection U11 of this section, or if other bona fide physical site constraints would prohibit compliance;
15. A covenant, to which the city is a party, shall be recorded with the county auditor stating that the temporary dwelling and any related improvements do not vest the property with any right to subdivide or convert the temporary dwelling to a permanent dwelling, except in conformance with the Kelso Municipal Code;
16. The temporary unit shall be removed within ninety days if the temporary unit is no longer occupied by the person(s) for which the permit was issued, or the permit has expired and was not renewed.

V. All kennels (as described in Section 17.08.020) and veterinarian clinics (as described in Section 17.08.020) shall be provided with indoor sleeping areas, in order to minimize nighttime noise impacts to neighboring properties. (Ord. 3828 § 5 (Exh. C), 2014; Ord. 3799 § 1 (Att. B), 2013; Ord. 3745 § 1 (Att. B), 2011; Ord. 3699 § 1 (Att. B), 2009)

W. Religious organizations may be permitted to host encampments for the homeless on a temporary basis in accordance with the provisions of RCW 36.01.290, provided that:

1. The City may impose conditions of approval necessary to protect the public health and safety;
2. Prospective applicants shall submit for City review and approval, plans that at a minimum address:
 - a. The maximum number of occupants to be allowed in the encampment;
 - b. Provisions for toilets, running water, and garbage collection that meet local health standards;
 - c. Provisions for cooking facilities including food storage and dish washing;
 - d. Provisions for tents or similar sleeping shelters; and
 - e. Plans for the location of first aid equipment, fire extinguishers, designated smoking areas (if any), maintenance of necessary access, plans for keeping the site free of litter or garbage, and plans for prohibiting open flames.
3. Encampments shall be open for inspection by the City Manager and his/her designees at all times, without prior notice, to determine compliance with the conditions of approval. This shall include, but is not limited

to the Health Department, Fire Department, Police Department, and the Department of Community Development.

CITY OF KELSO, WASHINGTON
ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON, RELATING TO COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS FACILITIES; ADDING A NEW CHAPTER-REGULATORY NOTE TO KELSO MUNICIPAL CODE CHAPTER 17.15.040 TO THE _____ CODE; ESTABLISHING DEVELOPMENT REGULATIONS FOR COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS TRANSMISSION FACILITIES TO CONFORM TO FEDERAL LAW AND REGULATIONS; ESTABLISHING AN APPLICATION SUBMITTAL AND APPROVAL PROCESS; PROVIDING FOR TERMINATION OF NON-CONFORMING STRUCTURES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the “**1996 Act**”), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Kelso Municipal Code ~~of the City~~ establishing local requirements for the location, construction, and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012” (the “**Spectrum Act**”) (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter “**Section 6409**”) of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the “FCC”) to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC, pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (*In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above described proceeding (the “**Report and Order**” or “**Order**”) clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC’s review processes under the National Environmental Policy Act of 1969 (“**NEPA**”) and section 106 of the National Historic Preservation Act of 1966 (“**NHPA**”), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) by adding new Subpart CC § 1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station (“**Eligible Facility Request Rules**”); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60 shot clock and tolling provisions, establishes a deemed approved remedy for applications not timely responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Report and Order provides that the Eligible Facility Request Rules will be effective 90 days following publication in the Federal Register; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, the Order is subject to appeal, however, even if an appeal is filed, the appeal will not automatically result in delay of implementation of the Eligible Facility Request Rules; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (RCW Chapter 43.21.C), pursuant to Washington Administrative Code Chapter 197-11, and a determination of Non-Significance (“DNS”) was issued on the ___ day of _____, 20___; and

~~**WHEREAS**, in accordance with RCW 36.70A.106 and WAC 365-196-630, a notice of intent to adopt the proposed new development regulations was sent to the State of Washington Department of Commerce and to other state agencies to allow for a 60-day review and comment period, which comment period ended prior to adoption of this ordinance; and~~

WHEREAS, on the 10th day of November, 2015 the Planning Commission held a duly noticed public meeting related to the proposed amendments to the ~~interim~~ development and zoning regulations set forth in the proposed ordinance; and

WHEREAS, the City Council considered the proposed amendments to the development and zoning regulations on the ___ day of _____, 20___; and

WHEREAS, the City Council finds that the proposed amendments development and zoning regulations are reasonable and necessary in order bring the City’s development regulations into compliance with the mandate imposed upon the City by Congress pursuant to

Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. Findings Adopted. The City Council adopts all of the 'WHEREAS' sections of this Ordinance as findings in support of this ordinance.

SECTION 2. KMC Section 17.15.040 Amended. Kelso Municipal Code Section 17.15.040 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

SECTION 3. Corrections. Upon approval of the City Attorney, the City Clerk and code reviser are authorized to make necessary corrections to this ordinance, including without limitation the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

SECTION 4. Severability. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 5. Effective Date. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2015.

MAYOR DAVID FUTCHER

ATTEST/AUTHENTICATION:

APPROVED AS TO FORM

CITY CLERK

CITY ATTORNEY

PUBLISHED:_____

Exhibit A
Ordinance _____
KMC 17.15.040 Eligible Wireless Communication Facilities Modifications
October 6, 2015

KMC 17.15.040 is hereby amended to add a new regulatory note X to be known and referred to as 17.15.040 X Eligible Wireless Communication Facilities Modifications, and reading as follows:

17.15.40 X Eligible Wireless Communication Facilities Modifications

1. Definitions. The following definitions shall apply in the interpretation and enforcement of this section, unless the context clearly requires otherwise. Any term or phrase not defined herein shall have the meaning that is given to that term or phrase in Kelso Municipal Code 17.08 Definitions. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory and the word “may” is always discretionary. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.
 - a. “Approval authority” is the City Manager or his/her designee, who has authority to administratively issue project permit approvals.
 - b. “Applicant” shall mean and refer to the person, and such person’s successor in interest, owning and/or operating the transmission equipment proposed in an eligible facilities modification application to be collocated, removed or replaced.
 - c. “Authorized person” is the person, employees, agents, consultants, and contractors, authorized in writing by applicant to complete and submit an eligible facilities modification application on behalf of applicant and who is authorized to receive any notices on behalf of applicant of any action taken by the City regarding the application.
 - d. “Base station” shall mean and refer to the structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this section or any equipment associated with a tower.
 - (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety

services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- (ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
 - (iii) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City under this Section, supports or houses equipment described in paragraphs (i) - (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
 - (iv) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the City under this section, does not support or house equipment described in paragraphs (i) - (ii) above.
- e. “Collocation” shall mean and refer to the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
 - f. “Conceal” or “Concealment” shall mean and refer to eligible support structures and transmission facilities designed to look like some feature other than a wireless tower or base station.
 - g. “Deemed approved” shall mean and refer to an eligible facilities modification application that has been deemed approved upon the City’s failure to act, and has become effective, as provided pursuant the FCC Eligible Facilities Request Rules.
 - h. “Eligible facilities modification application” or “application” shall, unless the context clearly requires otherwise, mean and refer to a written document submitted to the City pursuant to this section for review and approval of a proposed facilities modification.
 - i. “Eligible facilities modification” shall mean and refer to any proposed facilities modification that has been determined pursuant to the provisions of this section to be subject to this section and which does not result in a substantial change in the physical dimensions of an eligible support structure.
 - j. “Eligible facilities modification permit” or “permit” shall, unless the context clearly requires otherwise, mean and refer to a written document issued by the

approval authority pursuant to this section approving an eligible facilities modification application.

- k. “Eligible support structure” shall mean and refer to any existing tower or base station as defined in this section, provided that it is in existence at the time the eligible facilities modification application is filed with the City under this section.
- l. “Existing” shall, for purpose of this section and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the City, or under another State, county or local regulatory review process; provided that, a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- m. “Proposed facilities modification” shall mean and refer to a proposal submitted by an applicant to modify an eligible support structure which the applicant asserts is subject to review under Section 6409 of the Spectrum Act, and involving:
 - (i) collocation of new transmission equipment;
 - (ii) removal of transmission equipment; or
 - (iii) replacement of transmission equipment.
- n. “FCC” shall mean and refer to the Federal Communications Commission or its successor.
- o. “FCC Eligible Facilities Request Rules” shall mean and refer to 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Subpart CC § 1.40001 as established pursuant to its Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, or as may be thereafter amended.
- p. “Site” shall, for towers other than towers in the public rights-of-way, mean and refer to the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, shall mean and be further restricted to, that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- q. “Small cell facility” shall mean and refer to a personal wireless services facility that meets both of the following qualifications:

- (i) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
 - (ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.
 - r. “Small cell network” shall mean and refer to a collection of interrelated small cell facilities designed to deliver personal wireless services.
 - s. “Spectrum Act” shall mean and refer to the “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).
 - t. “Substantial change criteria” shall mean and refer to the criteria set forth in this Section.
 - u. “Transmission Equipment” shall mean and refer to equipment that facilitates transmission for any wireless communication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - v. “Tower” shall mean and refer to any structure built for the sole or primary purpose of supporting any antennas and their associated facilities, licensed or authorized by the FCC, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
3. Applicability - Relationship to other Rules and Regulations.
- a. Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and notwithstanding any other provisions in the City Code, the provisions of this section shall be the sole and exclusive procedure for review and approval of a proposed facilities modification which the applicant asserts is subject to review under Section 6409 of the Spectrum Act. To the extent that

other provisions of the City Code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this section shall control. In the event that any part of an application for project permit approval includes a proposed facilities modification, the proposed facilities modification portion of the application shall be reviewed under the provisions of this section. In the event that an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be subject to review under this section and may be subject to review under other applicable provisions of the City Code.

- b. Non-conforming Structures. This section shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming, or legal non-conforming, structure at the time a completed eligible facilities modification application is filed with the City. To the extent that the non-conforming structures and use provisions of the City code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this section and shall not apply.
- c. Replacement of Eligible Support Structure. This section shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of the tower or base station.
- d. First Deployment; Base Station. This section shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within or upon, or attached to, the structure.
- e. Interpretation. Interpretations of this Section shall be guided by Section 6409 of the Spectrum Act; the FCC Eligible Facilities Request Rules, the FCC's Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153.
- f. SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible facilities modification application are not subject to, and are exempt from, the requirements of RCW 43.21C.030(2)(c), if
 - (i) The proposed facilities modification would not increase the height of the eligible support structure by more than ten percent, or twenty feet, whichever is greater; or

- (ii) The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater; or
 - (iii) The authority to condition or deny an application pursuant to Chapter 43.21 RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.
 - g. Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the City's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.
4. Permit Classification. An eligible facilities modification permit shall be classified as an administrative permit subject to review and approval or denial by the approval authority.
5. Application Submittal Requirements; Determination of Completeness.
- a. Purpose. This section sets forth the submittal requirements for an eligible facilities modification application. The purpose of the submittal requirements is to ensure that the City has all information and documentation that is reasonable necessary to determine if the applicant's proposed facilities modification will substantially change the physical dimensions of an eligible support structure. The submittal requirements are not intended to require the applicant to establish the need for the proposed modifications or to justify the business decision to propose such modifications.
 - b. Submittal Requirements. No eligible facilities modification application shall be deemed complete unless it is, in writing, accompanied by the applicable application and review fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant, certifying the truth and accuracy of the information provided in the application. The application shall include the following submittals, unless waived by the approval authority:
 - (i) The following contact information for the Authorized Person:
 - (1) Name;
 - (2) Title;
 - (3) Mailing Address;
 - (4) Phone Number; and
 - (5) Electronic Mail Address (Optional).

- (ii) The legal and dba names, mailing address, Washington tax number, and contact phone number(s) of Applicant.
- (iii) If a corporation, the name and address of the registered agent of Applicant in the Washington State, and the state of incorporation of Applicant.
- (iv) If Applicant is an entity, other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
- (v) An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act.
- (vi) If the applicant is not the owner or person in control of the eligible support structure an attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facilities modification shall be required. If the eligible support structure is located in a public right of way, the applicant must also attest that applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right of way.
- (vii) If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure shall be required:.
- (viii) If the applicant proposes a modification that will result in an increase in height of the eligible support structure, record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the City or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater, shall be required.
- (ix) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the City Code, or an ordinance or a municipal code of another local government authority, a copy of the document (e.g., *CUP or SUP*) setting forth such pre-existing restrictions or requirements together with a certification that the proposed facilities modification conforms to such restrictions or requirements; provided

that, such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure, shall be required.

- (x) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
- (xi) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification, shall be required. .
- (xii) If the applicant proposes a modification to an eligible support structure that will (a) include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, a description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation and dimensions of the new or replacement transmission equipment, shall be required. The city may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.
- (xiii) If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, a technical report by a qualified engineer accredited by the state of Washington, demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed collocation, removal, or replacement of transmission

equipment and conforms to applicable code requirements shall be required. The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of necessity.

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

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

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

(xv) If the applicant proposes a modification to a base station a stamped report by a state of Washington registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes shall be required.

(xvi) If the applicant proposes a modification requiring, alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, a detailed site plan and drawings, shall be required showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting, (a) the location, elevation and dimensions of the existing eligible support structure, (b) the location, elevation and dimensions of the existing transmission equipment, (c) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment, (d) the location, elevation and dimensions of any proposed new equipment

cabinets and the intended use of each, (e) any proposed modification to the eligible support structure, (f) the location of existing structures on the site, including fencing, screening, trees, and other significant site features, and (g) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

(xvii) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Section 1.1307, as amended, or, in the event that an FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment.

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

d. **When Received.** An eligible facilities modification application, and any supplemental submittals, shall be deemed received by the City upon the date such application, or supplemental submittal, is filed with the Department of Community Development.. An application, and any supplemental submittals, must be filed in person during regular business hours of the City and must be accompanied by the applicable permit review fee(s). Any application received by the City without contemporaneous payment, or deposit, of the applicable permit review fees will be rejected.

e. **Completed Application; Determination; Tolling.**

(i) **Determination of Completeness.** The approval authority shall, within thirty (30) days of receipt of the application, review the application for completeness. An application is complete if it includes the applicable permit review fee(s) and contains all of the applicable submittal requirements set forth in this section, unless waived by the approval authority pursuant. The determination of completeness shall not preclude the approval authority from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, or substantial changes in the proposed action occur, or the proposed facilities modification is modified by applicant, as determined by the approval authority.

(ii) **Incomplete Application.** The approval authority shall notify the applicant within thirty (30) days of receipt of the application that the application is

incomplete. Such notice shall clearly and specifically delineate all missing documents or information.

- (iii) Tolling Timeframe for Review. The application review period begins to run when the application is received, and may be tolled when the approval authority determines that the application is incomplete and provides notice as set forth below. The application review period may also be tolled by mutual agreement of the approval authority and applicant. The timeframe for review is not tolled by a moratorium on the review of eligible facility modification applications.
- (1) To toll the timeframe for review for incompleteness, the approval authority must provide written notice to the applicant within thirty (30) days of the date of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to submittals set forth in this Section and any supplemental information requested by the approval authority that is reasonably related to determining whether the proposed facilities modification will substantially change the physical dimension of an eligible support structure.
 - (2) The timeframe for review begins running again when the City is in receipt of applicant's supplemental submission in response to the approval authority's notice of incompleteness.
 - (3) Following a supplemental submission, the approval authority shall have ten (10) days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (3)(c). Except as may be otherwise agreed to by the applicant and the approval authority, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (4) A notice of incompleteness from the City will be deemed received by the Applicant upon the earlier of, personal service upon the authorized person, delivery by electronic mail to the authorized person (if such delivery is authorized for receipt of notice by the authorized person), or three (3) days from deposit of the notice in the United States Mail, postage prepaid, and in an envelope properly addressed to the authorized person using the address set forth in the application.

(iv) Modification of Application. In the event that after submittal of the application, or as a result of any subsequent submittals, applicant modifies the proposed facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

6. Review of Application; Approval.

- a. Review of Application. The approval authority shall review an eligible facilities modification application to determine if the proposed facilities modification is subject to this section, and if so, if the proposed facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.
- b. Timeframe for Review. Within sixty 60 days of the date on which the City receives an eligible facilities modification application, less any time period that may be excluded under the tolling provisions of this section or a tolling agreement between the applicant and the approval authority, the approval authority shall approve the application and contemporaneously issue an eligible facilities modification permit unless the approval authority determines that the application is not subject to this section, or the proposed facilities modification will substantially change the physical dimension of an eligible support structure.
- c. Approval; Denial. An eligible facilities application shall be approved, and an eligible facilities permit issued, upon determination by the approval authority that the proposed facilities modification is subject to this section and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities application shall be denied upon determination by the approval authority that the proposed facilities modification is not subject to this section or will substantially change the physical dimensions of an eligible support structure. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the substantial change criteria.
- d. Deemed Approved Application. An application that has been deemed approved shall be and constitute the equivalent of an eligible facilities modification permit, except as may be otherwise determined by a court of competent jurisdiction, and shall be subject to generally applicable enforcement and compliance requirements in the same manner as an eligible facilities modification permit issued pursuant to this section.

- e. Denial of Application. A denial of an eligible facilities modification application shall set forth in writing the reasons for the denial and shall be provided to the applicant.
 - f. Code Requirements. Any eligible facilities modification permit issued pursuant to this section, and any application that has been deemed approved, shall be and is conditioned upon compliance with any generally applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and safety. Violation of any such applicable code or standard shall be deemed to be a violation of the eligible facilities modification or deemed approved application.
 - g. Term of Eligible Facilities Modification Permit. An eligible facilities modification permit issued pursuant to this section, and any deemed approve application, shall be valid for a term of 180 days from the date of issuance, or the date the application is deemed approved.
 - h. Remedies. Notwithstanding any other provisions in the City code, no administrative review is provided for review of a decision to condition, deny or approve an application. Applicant and the City retain any and all remedies that are available at law or in equity, including by way of example and not limitation, those remedies set forth in the FCC Eligible Facilities Request Rules and remedies available under the Land Use Petition Act. In the event no other time period is provided at law for bringing an action for a remedy, any action challenging a denial of an application or notice of a deemed approved remedy, shall be brought within thirty (30) days following the date of denial or following the date of notification of the deemed approved remedy.
9. Substantial Change Criteria.

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

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

Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved

appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

- b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 - (i) it entails any excavation or deployment outside the current site;
 - (ii) it would defeat the concealment elements of the eligible support structure; or
 - (iii) it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

10. Non-Conforming Structure; Termination.

- a. Application. The provisions of this section shall apply to any facilities modification constructed, installed, placed or erected pursuant to an eligible facilities modification permit, or pursuant to a deemed approved remedy, which facilities modification did not conform to zoning and/or development regulations, exclusive of this section, in effect at the time the completed eligible facilities modification application was filed.
- b. Non-Conforming Structure Determination. A facilities modification to which this section applies is subject to termination as a non-conforming structure upon the following conditions:
 - (i) Final, Non-Appealable Decision. An appellate court, in a final and non-appealable decision, determines that § 6409(a)(1) of the Spectrum Act is unconstitutional or otherwise determined to be invalid or unenforceable; and

- (ii). Notice of Non-Conforming Structure Determination. The City provides written notice to the applicant that the City has determined that the facilities modification did not conform to zoning and/or development regulations, exclusive of this section, in effect at the time the completed eligible facilities modification application was filed and that the facilities modification constitutes a non-conforming structure pursuant to the provisions hereof and must be made conforming or the facilities modification terminated.
- c. Conformance; Termination. Upon receipt of notice of the City's non-conforming structure determination, applicant shall abate the non-conformance by either, conforming the site to the zoning and development regulations in effect at the time the completed eligible facilities modification application was filed, or removing the facilities modification and returning the site to the condition that existed prior to the construction, installation, placement or erection of the facilities modification. The time period for conformance shall be one (1) year from the date of the City's notice of the non-conforming structure determination.
- d. Health and Safety Codes. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.
- e. Administrative Appeal. The applicant, or its successors or assigns, may appeal the City's determination of non-conformance to the City Hearing Examiner by filing a notice of appeal within fourteen (14) calendar days of the date of the determination of non-conformance, excluding holidays.

11. Enforcement; Violation.

Compliance with the provisions of this Section is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions set forth in the Kelso Municipal Code.

12. Interpretations.

The City Manager or his or her designee is authorized to make such administrative interpretations as may be necessary in order to implement this Section in a timely and reasonable manner and to comply with the provisions of federal laws and rules.

- a. In the event of a conflict between the provisions of this Section and the provisions of other sections of the Kelso Municipal Code, including, but not limited to 17.15.040 N, O, P, and Q, the provisions of this Section shall apply.