ORDINANCE NO. 4286

AN ORDINANCE of the City Council of the City of Kent, Washington, amending section 15.08.035 of the Kent City Code, entitled “Wireless telecommunications facilities,” to add definitions and a land use review exemption relating to small cell equipment.

RECITALS

A. There is a need to encourage the availability of high-speed internet and cellular telephone access for residents and businesses, acknowledging that a growing number of businesses are conducted from homes or on-the-go; that education increasingly incorporates on-line learning necessitating good home internet connections for students and faculty; and that government participation and emergency service to the general public are enhanced by fast and reliable cellular and home internet connectivity.

B. Increasing public demand for fast and reliable cellular and internet service has necessitated new wireless technology called “small cells” that transmit at much lower signal power levels, enabling wireless telecommunication equipment to be smaller and located on shorter poles.
C. It is important to accommodate the growing demand and constantly changing technology for telecommunications services in support of City Council’s strategic goal for evolving infrastructure.

D. It is necessary to encourage the location of small cell facilities on existing infrastructure, including proprietary and leased poles within the right-of-way in order to encourage concealed technologies; thereby minimizing visual impacts and effects upon the natural environment.

E. Small cell equipment attaching to propriety or leased poles such as electric, telephone or light poles will look and function like utilities. Utilities such as these do not currently require land use permits unless they are located within 200 feet of a shoreline of the state.

F. The Zoning Code currently requires a land use permit for each proposal to attach wireless telecommunication equipment to an existing structure. Current and anticipated future requests from multiple wireless carriers to place small cell equipment on hundreds of utility poles throughout the city will result in a significant amount of staff time to review the land use permits and write staff reports.

G. It is within the public interest to streamline City processes and reduce staff time where the streamlined effort will have the same result on the physical environment as the prior process.

H. At two City Council Workshops on February 20, 2018 and April 3, 2018, Legal and Planning staff provided an overview regarding small cell technology and aesthetics, explaining the need for streamlined permitting and concealment measures.

I. On May 18, 2018, the City requested expedited review under RCW 36.70A.106 from the Washington State Department of Commerce.
regarding the City’s proposed code amendments related to small cell facilities. The Washington State Department of Commerce granted the request for expedited review on June 5, 2018. No comments were received from State agencies.

J. The City’s SEPA Responsible Official determined that the proposed code amendments are categorically exempt under WAC 197-11-800(19) because they relate solely to governmental procedures and contain no substantive standards respecting use or modification of the environment.

K. At its regularly-scheduled public meeting on July 23, 2018, the Land Use and Planning Board (LUPB) held a public hearing regarding the proposed code amendments related to small cell facilities. After considering the matter, the LUPB voted to recommend adoption of the proposed amendments to the City Council.

L. On September 10, 2018, the Economic and Community Development Committee considered the recommendations of the LUPB at its regularly-scheduled meeting, and recommended to the full City Council approval of the proposed code amendments.

M. At its regularly-scheduled meeting on September 18, 2018, the City Council voted to adopt the amendments to portions of Chapter 15.08.035 of the Kent City Code, pertaining to small cell facilities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:
ORDINANCE

SECTION 1. - Amendment – KCC 15.08.035. Section 15.08.035 of the Kent City Code, entitled “Wireless telecommunications facilities,” is hereby amended to read as follows:

Sec. 15.08.035. Wireless telecommunication facilities.

A. Purpose and goals. The purpose of this section is to establish general guidelines for the siting of wireless telecommunications facilities (WTFs), specifically including, without limitation, towers and antennas, in light of the following goals:

1. Protecting residential areas from potential adverse impacts;
2. Enhancing the ability of the providers of wireless telecommunications services to provide those services quickly, effectively, and efficiently;
3. Encouraging location in nonresidential areas;
4. Minimizing the total height of towers within the community;
5. Encouraging the joint use of new and existing sites;
6. Encouraging service providers to locate and configure facilities to minimize adverse impacts through careful design, siting, landscaping, screening, and innovative camouflaging techniques; and
7. Considering potential adverse impacts to the public health and safety from these facilities except where preempted by other laws, rules, and regulations.

In furtherance of these goals, the city shall give due consideration to the city’s comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of WTFs, including towers and antennas.

B. Definitions. As used in this section only, the following terms shall have the meanings set forth below:

Abandon or abandonment means:
1. To cease operation for a period of one hundred eighty (180) or more consecutive calendar days; or

2. To reduce the effective radiated power of an antenna by seventy-five (75) percent for one hundred eighty (180) or more consecutive calendar days unless new technology or the construction of additional cells in the same locality allows reduction of effective radiated power by more than seventy-five (75) percent, so long as the operator still serves essentially the same customer base.

*Antenna* means any exterior transmitting or receiving device used in communications that radiates or captures electromagnetic waves.

*Backhaul network* means the lines that connect a provider’s WTFs/towers/cell sites to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

*Camouflage* means to disguise, hide, or integrate with an existing or proposed structure or with the natural environment so as to be significantly screened from view.

*Co-locate* means use of a WTF by more than one (1) service provider.

*COW* means cell on wheels or Cellular on Wheels.

*EIA* means Electronic Industries Association.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*Guyed tower* means a wireless communication support structure which is typically over one hundred (100) feet tall and is steadied by wire guys in a radial pattern around the tower.

*Height* means, when referring to a tower or other WTF, the distance measured from the finished grade of the parcel at the base of the WTF to the highest point on the tower or other WTF, including the base pad and any antennas.
Lattice tower means a support structure which consists of a network of crossed metal braces, forming a tower which is usually triangular or square in cross-section.

Monopole tower means a support structure which consists of a single pole sunk into the ground and/or attached to a foundation.

Non-whip antenna means an antenna that is not a whip antenna, such as dish antennas, panel antennas, etc.

Personal Wireless Service means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined in Title 47, United States Code, Section 332(c)(7)(C), or as amended.

Preexisting WTF means any WTF for which a building permit has been properly issued prior to July 7, 1997, including permitted WTFs that have not yet been constructed, so long as that permit or approval has not expired.

Small Cell Equipment means Wireless Telecommunications Facilities attached, mounted, or installed on a proprietary or leased pole excluding monopole towers, that is located in Right-of-Way and used to provide Personal Wireless Service.

Telecommunications means the transmission, between or among points specified by the user, of information of the user’s choosing without change in the form or content of the information as sent and received.

Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas for telecommunications, telephone, radio, and similar communication purposes. The term includes the structure, all structural supports, and all related buildings and appurtenances.
Whip antenna means an omni-directional dipole antenna of cylindrical shape that is no more than six (6) inches in average diameter.

Wireless telecommunications facility or WTF includes “personal wireless service,” “personal wireless service facilities,” and “facilities” as defined in Title 47, United States Code, Section 332(c)(7)(C), including all future amendments, and also includes facilities for the transmission and reception of radio or microwave signals used for communication, telecommunication, cellular phone personal communications services, enhanced specialized mobile radio, and any other services licensed by the FCC, and also includes any other unlicensed wireless services.

C. Applicability.

1. New uses. All WTF proposals made in the city, whether for new construction or for modification of existing facilities, shall be subject to the regulations set forth in this code, except as provided in subsection (D) of this section.

D. Exemptions. The following are exempt from the provisions of this section and are allowed in all zoning districts.

1. Existing uses. WTFs that currently exist on July 7, 1997, or for which a valid building permit has been obtained and remains in effect on July 7, 1997, except this exemption does not apply to modifications of existing facilities.

2. Industrial/scientific equipment. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

3. Amateur radio station operators or receive-only antennas. Any tower or antenna that is under seventy (70) feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
4. *Home satellite services.* Satellite dish antennas less than two (2) meters in diameter, including direct-to-home satellite services, when used as a secondary use of the property.

5. *COW.* A COW or other temporary WTF, but its use anywhere in the city cannot exceed thirty (30) days, unless extended by permit issued by the planning manager or unless the city has declared an area-wide emergency.

6. *Public safety WTFs and equipment.* Public safety WTFs and equipment, including, but not limited to, the regional 911 system.

7. *Small Cell Equipment.* Small cell equipment as defined in 15.08.035.B, subject to a specific agreement with the City, provided such equipment complies with concealment features stipulated in such agreements.

E. *General.*

1. *Principal or accessory use.* WTFs may be considered either principal or accessory uses. A different use of an existing structure on the same lot shall not preclude the installation of WTFs on that lot.

2. *Not essential services.* WTFs shall be regulated and permitted pursuant to this section and shall not be regulated or permitted as essential public services.

F. *General requirements.*

1. *Siting.* Anyone who applies to construct a WTF or to modify or add to an existing WTF shall demonstrate to the city’s satisfaction that the proposed facility is located at the least obtrusive and the most appropriate available site to function in the applicant’s grid system.

2. *FCC licensing.* The city will only process WTF permit applications upon a satisfactory showing of proof that the applicant is an FCC licensed telecommunications provider or that the applicant has
agreements with an FCC licensed telecommunications provider for use or lease of the facility.

3. Compliance with other laws. Applicants must show, to the satisfaction of the planning manager, compliance with current FCC and FAA rules and regulations and all other applicable federal, state, and local laws, rules, and regulations.

4. Lot size. For purposes of determining whether the installation of WTFs complies with district development regulations including, but not limited to, setback requirements, lot-coverage requirements, and other requirements, the dimensions of the entire lot shall control, even though the WTFs may be located on leased parcels within that lot.

5. Height. Unless further restricted or expanded elsewhere in this section, no WTFs may exceed the following height and usage criteria:
   a. For a single user, up to ninety (90) feet in height; and
   b. For two (2) or more users, up to one hundred twenty (120) feet in height.

6. Security fencing. WTFs shall be enclosed, where appropriate, by security fencing not less than six (6) feet in height; provided however, that the planning manager or, where applicable, the hearing examiner may waive these requirements, as appropriate.

7. Landscaping. WTFs shall be landscaped with a buffer of plant materials that effectively screens the view of the WTF compound; provided, however, that the planning manager or, where applicable, the hearing examiner may waive these requirements if the goals of this section would be better served.

8. WTFs mounted on structures or rooftops. WTFs mounted on existing structures or rooftops shall be designed and located so as to minimize visual and aesthetic impacts to the adjoining land uses and structures and shall, to the greatest extent practical, blend into the existing environment.

9. Aesthetics. WTFs shall meet the following requirements:

Amend KCC 15.08.035
Re: Small Cell Equipment
a. WTFs shall be painted a neutral color so as to reduce visual obtrusiveness.

b. At a WTF site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend into the existing natural and constructed environment.

10. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required for any WTF, the lighting must cause the least disturbance to the surrounding area.

11. Measurement. For purposes of measurement, WTF setbacks and separation distances shall be calculated and applied irrespective of municipal and county jurisdictional boundaries.

12. Franchises, licenses, and permits. Owners and/or operators of WTFs shall certify that they have obtained all franchises, licenses, or permits required by law for the construction and/or operation of a wireless telecommunication system in the city and shall file a copy of all required franchises, licenses, and permits with the planning manager.

13. Signs. No signs shall be allowed on an antenna or tower.

14. Backhaul providers. Backhaul providers shall be identified and they shall have and maintain all necessary approvals to operate as such, including holding necessary franchises, permits, and certificates. The method of providing backhaul, wired or wireless, shall be identified.

G. Tower requirements.

1. Tower setbacks. All towers, support structures, and accessory buildings must satisfy the minimum setback requirements for that zoning district.

2. Support systems setbacks. All guywires, anchors, and other support structures must be located within the buildable area of the lot and
not within the front, rear, or side yard setbacks and no closer than five (5) feet to any property line.

3. **Monopole construction required.** All towers will be of a tapering monopole construction; however, the planning manager or, where applicable, the hearing examiner may allow another type tower upon a showing that it would cause less impact to the surrounding property than a similar monopole structure or would further the purposes and goals in this section.

4. **Inventory of existing sites.** Each applicant for a tower shall provide an inventory of its existing WTF sites that are either within the jurisdiction of the city or within one (1) mile of its borders, including specific information about the location, height, and design of each facility.

5. **EIA standards.** Towers shall be constructed so as to meet or exceed the most recent EIA standards. Prior to issuance of a building permit, the building official shall be provided with an engineer’s certification that the tower’s design meets or exceeds those standards.

6. **Site selection and height.** Towers shall be located to minimize their number and height and to minimize their visual impacts on the surrounding area in accordance with the following policies:
   a. Ensure that the height of towers has the least visual impact and that the height is no greater than necessary to achieve service area requirements and to provide for potential co-location; and
   b. Demonstrate that the owner or operator has, to the greatest extent practical, selected a new tower site that provides the least visual impact on residential areas. This shall include an analysis of the potential impacts from other vantage points in the area to illustrate that the selected site and design provides the best opportunity to minimize the visual impact of the proposed facility; and
   c. Site so as to minimize being visually solitary or prominent when viewed from surrounding areas, especially residential areas. The facility should be camouflaged to the maximum extent feasible.

**Amend KCC 15.08.035-**
**Re: Small Cell Equipment**
7. **Co-location priority.** Co-location of antennas by more than one (1) carrier on existing towers is preferred to construction of new towers; provided, that the co-location is consistent with the following:

   a. **Redesign restrictions.** A tower that is modified or reconstructed to accommodate the co-location of an additional antenna shall be of the same tower type as the existing tower, or of a less obtrusive design (such as a monopole), if practical.

   b. **Height.** Except as may be modified in subsection (I)(1)(a) of this section, an existing tower may be modified or rebuilt to a taller height, not to exceed thirty (30) feet over the tower’s existing height or one hundred twenty (120) feet, whichever is lower, to accommodate the co-location by another provider or operator of an additional antenna system in any district except DC, DCE, NCC, and all SR districts. This additional height shall not require an additional distance separation.

   c. **Onsite relocation.** A tower that is being rebuilt to accommodate the co-location of an additional antenna may be relocated on its existing site within fifty (50) feet of its existing location. If consistent with the purposes and goals in subsection (A) of this section, the planning manager or, where applicable, the hearing examiner, may permit the onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands.

8. **Separation distances between towers.** Separation distances between towers shall be measured between the proposed tower and preexisting towers. Measurement shall be from base of tower to base of tower, excluding pad, footing, or foundation. The separation distances shall be measured by drawing or following a straight line between the nearest point on the base of the existing tower and the proposed tower base, pursuant to a site plan of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 1, unless the distance is reduced by the planning manager when administratively

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Amend KCC 15.08.035-
Re: Small Cell Equipment
approving a WTF or by the hearing examiner through issuance of a conditional use permit.

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H. Administratively approved WTFs. The planning manager may administratively approve the uses listed in this subsection, once each applicant has applied for and provided all necessary information required in this code and in the city’s application form. This administrative approval is classified as a Process I application and is subject to the requirements of Ch. 12.01 KCC.

1. Administratively approved uses. The following uses may be approved by the planning manager after conducting an administrative review:

   a. Industrial/commercial zones. Locating WTFs, including the placement of additional buildings or other supporting equipment used in connection with WTFs, that do not exceed ninety (90) feet in height for a single user and one hundred twenty (120) feet in height for two (2) or more users in the following districts: MA, M1, M1-C, M2, M3, CM-1, CM-2, GC, and GWC.
b. **Antennas on existing structures.** Locating a WTF other than a tower as an accessory use by attachment to any building or structure other than a single-family dwelling or multifamily structure of fewer than eight (8) dwelling units in any zoning district provided:

i. The antenna does not extend more than twenty (20) feet above the highest point of the structure if a whip antenna, or ten (10) feet above the highest point of the structure if a non-whip antenna; and

ii. The antenna complies with all applicable building codes; and

iii. All associated equipment is placed either within the same building or in a separate structure that matches the existing building or structure in character and materials.

c. **WTFs on existing towers.** Locating a WTF through co-location by attaching the antenna to an existing tower.

d. **WTFs within allowable building height.** Locating WTFs, including placement of additional buildings or other supporting equipment used in connection with the WTF in O, CC, MRG, MRM, MRH, AG, and A-10 districts, so long as the WTF does not exceed the allowable building height for that district.

e. **COWS for greater than thirty (30) day periods.** Upon a proper showing of extreme necessity (for example, if repair or modification of an existing WTF clearly and legitimately cannot be completed within thirty (30) days), locating a COW at a single location for more than thirty (30) calendar days; however, purely economic convenience shall not be considered a viable factor in making this determination.

2. **Authority to waive certain requirements.** In connection with this administrative approval, the planning manager may, in order to encourage camouflaging and co-location of WTFs, administratively waive separation distance requirements between WTFs by up to fifty (50)
percent in nonresidential zones. Additionally, the planning manager may, in order to encourage the use of the least obtrusive type of WTF, administratively allow the reconstruction of an existing WTF to that less obstructive use.

I. **Conditional use permits.** Applications for conditional use permits under this subsection shall be subject to the procedures and requirements of KCC 15.09.030 and Ch. 12.01 KCC, except as modified by this subsection. If the WTF is not subject to administrative approval pursuant to subsection (H) of this section, then a conditional use permit shall be required.

1. **Conditional WTF uses.** Specifically, conditional use permits shall be required for the following WTFs:
   
   a. **Industrial/commercial zones.** Locating WTFs that exceed ninety (90) feet in height for a single user or one hundred twenty (120) feet for two (2) or more users or locating antennas on existing structures that exceed the height limitations in subsection (H)(2)(b) of this section in the following districts: MA, M1, M1-C, M2, M3, CM-1, CM-2, GC, and GWC.

   b. **Government property.** Locating WTFs (1) separate from existing structures on property owned, leased, or otherwise controlled by the city or other governmental entity or (2) attached to existing structures on property owned, leased, or otherwise controlled by the city or other governmental entity exceeding the height limitations in subsection (H)(2)(b) of this section, but only on the condition that the total height of the attached WTF, including the structure, does not exceed one hundred twenty (120) feet, unless permitted under subsection (I)(1)(a) of this section; however, this subsection shall not apply in DC, DCE, and NCC districts.
c. **WTFs exceeding allowable building height.** Locating WTFs that exceed the allowable building height in the following districts: O, CC, MRG, MRM, MRH, AG, and A-10.

d. **Tower construction under allowed separation distances.** Locating towers that do not meet the separation distance requirements in subsection (G)(8) of this section or that do not meet administratively approved separation distance limits.

2. **Factors considered in granting conditional use permits for towers.** In addition to KCC 15.09.030(D), the hearing examiner shall also consider the following factors when considering a CUP application for WTF towers:

   a. Height of the proposed tower;

   b. Proximity of the tower to residential structures and residential district boundaries;

   c. Nature of uses on adjacent and nearby properties;

   d. Surrounding topography;

   e. Surrounding tree coverage and foliage;

   f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

   g. Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures;

   h. Obstruction of or interference with views;

   i. Consistency with purpose and goals set forth in subsection (A) of this section.

3. **Availability of suitable existing towers, other structures, or alternative technology.** No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the hearing examiner that no existing tower, structure, or alternative technology that does not require the use of towers can accommodate the applicant’s
proposed WTF. An applicant shall submit information requested by the hearing examiner related to the availability of suitable existing towers, other structures, or alternative technology. Evidence submitted to demonstrate that no existing tower, structure, or alternative technology can accommodate the applicant’s proposed WTF may consist of any of the following:

a. No existing WTF is located within the geographic area that meets applicant’s engineering requirements.

b. Existing WTFs are not of sufficient height to meet applicant’s engineering requirements.

c. Existing WTFs cannot practically be reconstructed to provide sufficient structural strength to support applicant’s proposed antenna and related equipment.

d. Electromagnetic interference would occur between two (2) or more WTF systems.

e. The fees, costs, or contractual provisions required by the owner in order to share an existing WTF or to adapt an existing WTF for co-location are unreasonable. Fees or costs that exceed new WTF development shall not be presumed to render sharing facilities unsuitable.

f. Other limiting factors render existing WTFs unsuitable.

g. An alternative technology that does not require the use of towers or structures would be unsuitable. Costs of alternative technology that exceed new WTF development shall not be presumed to render the technology unsuitable.

4. *Separation requirements.* The hearing examiner may reduce tower separation distance requirements, including administratively approved separation distance reductions, if the purposes and goals of this section would be better served; however, development of multiple tower locations on a single site (often referred to as “antenna farms”) are specifically discouraged wherever possible.
J. Removal of abandoned towers.

1. Abandonment and removal. The owner or operator of any abandoned tower shall notify the city’s planning manager, in writing, of that abandonment and shall remove the same within ninety (90) calendar days. Failure to remove an abandoned tower within ninety (90) calendar days shall be grounds to remove the tower at the owner’s expense. If there are two (2) or more users of a single tower, then the city’s right to remove the tower shall not become effective until all users abandon the tower.

2. Partial abandonment and removal. If the antennas on any tower are removed or relocated to a point where the top twenty (20) percent or more of the height of the tower is no longer in use, the tower shall be deemed partially abandoned. The owner or operator of any partially abandoned tower shall notify the city’s planning manager, in writing, of that partial abandonment and shall remove the partially abandoned portion within ninety (90) calendar days. Failure to remove a partially abandoned tower within ninety (90) calendar days shall be grounds to remove the abandoned portion of the tower at the owner’s expense.

3. Security and lien. Each applicant, prior to commencement of construction, shall post sufficient security in the form of a bond, assignment of funds, cashier’s check, or cash, in a form acceptable to the city, to cover the estimated cost of demolition or removal of the tower and support structures, including complete site restoration. If for any reason the posted funds are not adequate to cover the cost of removal, then the city may charge the facility owner or operator with the city’s total cost incurred in removing the abandoned structures. If the owner or operator fails to make full payment within thirty (30) calendar days, then the amount remaining unpaid shall become a lien on the facility property.

K. Nonconforming uses.
1. **Preexisting towers.** Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted. Any construction other than routine maintenance on a preexisting tower shall comply with the requirements of this section.

2. **Damage or destruction not the fault of owner/occupant.** Bona fide nonconforming WTFs that are damaged or destroyed without fault attributable to the owner or entity in control may be rebuilt without first having to obtain administrative approval or a conditional use permit and without having to meet separation requirements. The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility. Building permits to rebuild the facility shall comply with applicable building codes and shall be obtained within one hundred eighty (180) days from the date the facility is damaged or destroyed. If no permit is obtained or if the permit expires, the tower or antenna shall be deemed abandoned as specified in subsection (J) of this section.

**SECTION 2.** – **Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 3.** – **Corrections by City Clerk or Code Reviser.** Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

**SECTION 4.** – **Effective Date.** This ordinance shall take effect and be in force thirty 30 days from and after its passage, as provided by law.
Amend KCC 15.08.035-
Re: Small Cell Equipment