



DATE: September 25, 2023

TO: Mayor Robinson and Members of the City Council

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*Development Services Department*

**SUBJECT:** Proposed Land Use Code Amendment (LUCA) to update the City's standards for Wireless Communication Facilities (WCFs) for conformance with federal law. File No. 23-105997-AD.

## **I. BACKGROUND**

The City regulates the siting and design of WCFs under Land Use Code (LUC) Chapter 20.20.195. Originally adopted in 1998, the chapter has not been significantly amended since 2003. In the interim, major changes to WCF technology, usage, and regulation have occurred. In particular, the Federal Communications Commission (FCC) has issued directives limiting local authority over WCF regulation.

This proposed LUCA responds to the following specific directives from the FCC:

- Establishment of shot clocks, or time limits for local review of proposed WCF deployment or modification; and
- Establishment of Eligible Facilities Requests (EFRs), or procedures for local review of WCF modifications that do not result in a substantial change to the WCF.

Additionally, the LUCA is intended to update code procedures based on new technologies, such as temporary WCFs and small wireless facilities (SWFs). However, the LUCA also aims to maintain existing locational, design, and screening standards for new WCFs that already exist in the code.

## **II. PROPOSED LUCA**

### Land Use Approval Processes for WCFs

The most significant amendments proposed under this LUCA are related to the permitting process for siting new WCFs. Currently, the land use approval required for WCFs depends on the location and design of a proposed WCF, with certain facilities permitted by right and others requiring a Conditional Use Permit (CUP). However, following FCC directives

establishing shot clocks for local WCF approvals, staff have determined that it is unlikely CUPs can be completed within the established timeframe. For example, the longest possible shot clock under FCC rules is 150 days for new purpose-built WCF support structures, whereas CUPs often exceed a year to complete. Therefore, the proposed LUCA revises the entitlement process for WCFs as follows:

<b>WCF Type/Attachment</b>	<b>Approval Process</b>
Modifications to existing WCFs that do not qualify as EFRs	<b>Permitted.</b> Construction or right-of-way permits may be required.
WCFs attached to existing structures (collocated)	
WCFs attached to new purpose-built structures (towers)	<b>Administrative Conditional Use Permit (ACUP).</b>
Requests for exemptions to WCF standards	

In short, WCFs attached to existing structures that meet all applicable requirements for screening and design may be permitted outright. Purpose-built towers, being more visibly impactful, require ACUP approval to ensure adequate public outreach and consideration is provided. However, although the process for siting these towers is proposed to be revised to save time, permit data indicate that these facilities are not commonly constructed. Between 1980 and 2018, 19 of these facilities have been approved through the Conditional Use Permit process. No proposals for purpose-built towers have been submitted since 2018. Additionally, an ACUP would be required for allowable exceptions to WCF design standards, such as height and protrusion limits, based on the technical needs of the facility as certified by an engineer. This will allow for flexibility in standards but provides an opportunity for public comment and appeal.

New Processes Codified: EFRs and Temporary WCFs

The proposed LUCA also establishes new procedures for WCFs that are currently not in effect. First, as noted above, the FCC created the EFR process to streamline the review process for modifications to existing WCFs. This process is currently not referenced in the LUC, but there are interim procedures that address EFRs. Thus, the LUCA will simply include a reference to EFRs for better clarity on how they are processed with the City.

Additionally, through outreach with stakeholders and permit review staff, the need for permitting procedures for temporary WCFs has been identified. Temporary WCFs are often attached to vehicles or trailers and are used to ensure coverage in an area where there may be temporary gaps. The proposed LUCA will require a Temporary Use Permit (TUP) for

these facilities and describes the situations in which temporary WCFs may be deployed, such as when an existing WCF is removed for redevelopment. The LUCA will also allow temporary WCFs to be in place longer than the typical 90-day limit for TUPs, provided they must be removed once the allowed activity requiring the temporary WCF is completed.

#### Consistent Definitions

In addition to more substantive amendments to the City's WCF regulations, staff have also taken the opportunity to update the code with more relevant terminology used in the industry and in federal law. These updates are intended to improve readability in the code, and to better align it with federal statutes. The new definitions include:

- Collocation
- Eligible Facilities Request (EFR)
- Over-the-Air Reception Device (OTARD)
- Small Wireless Facility (SWF)
- Tower
- Transmission Equipment

#### Existing Standards Maintained

Finally, the LUCA does retain the existing requirements for deployment, design, and screening of WCFs that are currently in place. These standards have been reorganized into sections based on the type and location of the WCF support structure. For example, collocated WCFs, or those attached to existing structures, must still meet the mechanical screening requirements under LUC 20.20.525, which is an existing requirement. Height limits, separation requirements, and locational restrictions in residential districts have all been maintained, as well. As noted above, there are limited exceptions to these standards, which may only be requested through an Administrative Conditional Use Permit application.

### **III. REVIEW PROCESS**

The City Council will be introduced to this LUCA on September 25. Following the introduction, a public hearing will be held at a future date, providing the opportunity for the public to comment and provide feedback on the LUCA directly to the City Council. After the hearing, the City Council may take final action on the LUCA.

### **IV. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The Environmental Coordinator for the City of Bellevue has determined that this LUCA is Categorically Exempt from the Threshold Determination requirements of SEPA pursuant to the terms of WAC 197-11-800(19).

## **V. PUBLIC ENGAGEMENT**

### Required Public Notice

The notice required for City Council Legislative Actions (Process IV) is governed by LUC 20.35.415 through 20.35.450. Notice of the LUCA application and public hearing will be published in the Weekly Permit Bulletin at least 14 days prior to the date of the public hearing, which is yet to be scheduled as of this writing.

### Department of Commerce Notice

Pursuant to the Washington State Growth Management Act, proposed amendments to the LUC must be sent to the Washington State Department of Commerce to review and comment on the proposed amendments to the LUC. The required notice to the Department of Commerce and the initial draft LUCA were transmitted on July 11, 2023, and a copy of both documents is available for review in the code amendment file. No comments have been received by Commerce as of the date of this report.

### Enhanced Public Engagement

In addition to the requirements of LUC 20.35.415 *es seq* for the City Council Legislative Actions under Process IV, staff engaged with the public and stakeholders in the following ways:

- Direct engagement with wireless carriers and contractors; and
- Creation of a City webpage with information on the LUCA, its progression through the review process, and instructions for providing input on the LUCA.

### Public Comments

As of the date of this staff report, no public comments have been received.

## **VI. DECISION CRITERIA**

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the Land Use Code. Those criteria, and the relationship of these proposed amendments to them, are discussed below:

### A. The amendment is consistent with the Comprehensive Plan; and

**Finding:** The proposed LUCA is consistent with the Comprehensive Plan. The LUCA serves to enable needed wireless coverage throughout the city, while maintaining standards that mitigate their aesthetic impacts. Additionally, the LUCA is consistent with the following Comprehensive Plan policies:

**Comprehensive Plan Policy UT-79.** Require the placement and design of wireless communication facilities in a manner that minimizes the adverse impacts on adjacent land uses.

**Comprehensive Plan Policy UT-83.** Recognize that wireless communication facilities will be deployed in all areas of the city to provide coverage and capacity consistent with the changing use of wireless technology. Minimize the attendant impacts, particularly the visual impacts of, wireless communication facility towers, lattice towers and structures by utilizing criteria for the design and location of such facilities that appropriately balance the need for wireless services and the impacts of the necessary facilities.

**Comprehensive Plan Policy UT-89.** Encourage the co-location of telecommunications equipment on city sites that reduce total impact of antennas on the community.

**Comprehensive Plan Policy UT-90.** Periodically review and update wireless facility regulations to respond to changes in technology and community conditions to balance impacts with the need for service.

B. The amendment enhances the public health, safety or welfare; and

**Finding:** This LUCA will enhance public health, safety, and welfare by enacting regulations for new WCF technologies that were not previously in place, and by updating existing regulations for WCFs to align with federal law. Together, these efforts will promote adequate coverage for personal wireless services, while also minimizing aesthetic impacts of WCFs.

C. The amendment is not contrary to the best interests of the citizens and property owners of the City of Bellevue.

**Finding:** The proposed LUCA is not contrary to the best interests of the citizens and property owners of the City of Bellevue because it maintains standards to minimize aesthetic impacts of WCF deployment. Additionally, for more impactful facilities such as standalone towers, the Administrative Conditional Use Permit process will provide opportunity for public comment prior to a decision.

**VII. RECOMMENDATION**

Staff has concluded that the Wireless LUCA, as drafted in Attachment A, is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC. Staff recommends that the City Council adopt the proposed LUCA.

**ATTACHMENT:**

- A. Proposed Wireless LUCA Strike-Draft