

CITY OF STANWOOD
Stanwood, Washington

ORDINANCE 1420

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, AMENDING CHAPTER 17.154 OF THE STANWOOD MUNICIPAL CODE. WIRELESS COMMUNICATIONS FACILITIES TO ADD A NEW SECTION EXPLICITLY REQUIRING A PERMIT FOR WIRELESS COMMUNICATIONS FACILITIES AND DESIGNATING THE PLANNING DIRECTOR AS THE RESPONSIBLE OFFICIAL, ADDING A NEW SECTION IMPLEMENTING FEDERAL COMMUNICATIONS COMMISSION (FCC) RULES AND ADDING A NEW SECTION IMPLEMENTING SECTION 6409(a) OF THE SPECTRUM ACT.

WHEREAS, existing chapter 17.154 of the Stanwood Municipal Code (SMC), Wireless Communications Facilities, was adopted in 1998 and last amended in 2002; and

WHEREAS, the Telecommunications Act of 1996 makes provision for the preservation of local zoning authority, but places certain limitations on the regulation of the placement, construction, and modification of personal wireless services facilities, codified in 47 USC §332(c)(7), including a requirement that local governments act on applications for personal wireless facilities within a reasonable time; and

WHEREAS, the Federal Communications Commission issued the *2009 Declaratory Ruling*, 24 FCC Rec 13994, which among other things, defined "reasonable period of time" to be 90 days for co-locations and 150 days for all other types of applications, and established rules for the running and tolling (pausing the running of the time period) referred to as the "shot clock" rules; and

WHEREAS, the FCC issued a *Report and Order* dated October 21, 2014, which among other things clarified certain aspects of the *2009 Declaratory Ruling*, which also be addressed in chapter 17.154 SMC; and

WHEREAS, existing chapter 17.154 SMC does not contain reference to the shot clock rules, which are required for compliance with the *2009 Declaratory Ruling* and the clarification of those rules in the *2014 Report and Order*, which should be adopted by adding new sections to chapter 17.154 SMC as set forth below; and

WHEREAS, other minor technical amendments should be made to chapter 17.154 to explicitly require permits for the construction of a wireless communications facility and designating the Planning Official as the responsible official; and

WHEREAS, the Planning Commission of the City of Stanwood held a public hearing on May 23, 2016, at which it received testimony from interested parties and recommend approval of the amendments proposed in this Ordinance;

NOW THEREFORE, the City Council of the City of Stanwood, Washington, do ordain as follows:

Section 1. There is hereby added to the Stanwood Municipal Code a new Section § 17.154.015, to read as follows:

17.154.015 Permit required – responsible official.

(1) No wireless communication facility shall be constructed within the city except pursuant to an approved wireless communication facility permit issued pursuant to the provisions of this chapter. Approval of a wireless communication facility permit does not eliminate the requirement for a building permit for any building or structure associated with such facility if otherwise required by the applicable construction codes adopted by reference in chapter 14.04 SMC.

(2) The responsible official for processing applications for wireless communication facility shall be the director of community development or his or her designee.

Section 2. There is hereby added to chapter 17.154 a new section § 17.154.115, to read as follows:

17.154.115 “Shot Clock” rules for processing applications.

The following rules shall apply to processing applications for wireless communications facilities:

(1) The time period for granting or denying a permit for a co-location application that does not result in a substantial increase in the size of the tower shall be 90 days (90 day shot clock). For purposes of this subsection a “substantial increase in size of the tower” means:

(a) The mounting of the proposed antenna on the tower would increase the existing 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 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(b) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(c) The mounting of the proposed antenna would involve 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, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the

antenna to the tower via cable; or

(d) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

(2) The shot clock for granting or denying a permit for all other types of application shall be 150 days (150 day shot clock).

(3) The shot clock shall begin to run on the date of filing of the application, not the date of a determination that the application is complete.

(4) The responsible official shall make a determination of completeness of the application and notify the applicant of such determination in writing within 30 days. Such determination of incompleteness shall specify the code provision, ordinance, application instruction, or publicly-stated procedures that requires the information to be submitted.

(5) The shot clock for granting or denying the application shall be tolled until the applicant makes a supplemental submission in response to the initial determination of incompleteness. The shot clock shall resume running on the day the applicant makes a supplemental submission.

(6) Any subsequent determination that the application remains incomplete must be based solely on the applicant's failure to supply information that was requested in the first 30 days. The responsible official shall have 10 days after the supplemental submission to notify the applicant that the supplemental submission did not provide the information identified in the original notice specifying missing information. A subsequent determination of incompleteness can result in further tolling of the shot clock only if the responsible official notifies the applicant in writing of such determination within the 10 day period.

(7) The responsible official shall grant or deny the application within the shot clock applicable to the specific application, as extended by any time the shot clock was tolled under this section.

(8) The responsible official and the applicant may agree in writing to additional tolling of the applicable shot clock.

(9) Any decision by the responsible official to deny the application shall be in writing and be based on substantial evidence in the record.

(10) In interpreting these shot clock rules, the responsible official should consult the FCC 2009 Declaratory Order and Section VI of the 2014 Report and Order (the FCC documents). In the event of any inconsistency between this section and the FCC documents, the FCC documents shall control.

Section 3. All other sections of chapter 17.154 SMC not specifically amended by this ordinance shall remain in full force and effect.

Section 4. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such a decision or preemption shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other persons or circumstances.

Section 5. This ordinance shall be effective from and after its approval and the expiration of five days after its publication as provided by law.


PASSED by the City Council and APPROVED by the Mayor this 28th day of July, 2016.

CITY OF STANWOOD



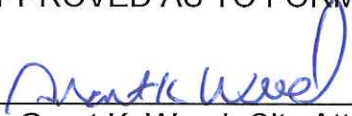
Leonard Kelley, Mayor

ATTEST:



Jan Berg, City Clerk

APPROVED AS TO FORM:



Grant K. Weed, City Attorney

Date Published: August 2, 2016

Effective Date: August 8, 2016