ORDINANCE NUMBER 5-98

AN ORDINANCE TO ESTABLISH LAND USE REGULATIONS FOR CELLULAR COMMUNICATION FACILITIES

WHEREAS, Resolution No. 119-96 was adopted by the Mason County Board of County Commissioners pursuant to RCW 36.70A.390, in order to place a moratorium on the processing of land use application for personal wireless services communication facilities in the unincorporated area of Mason County; and

WHEREAS, the moratorium was extended in order to consider a draft ordinance to establish development regulations which will provide sufficient definitive criteria with which the county can properly evaluate and condition the siting of wireless communication facilities; and

WHEREAS, The proposal was sent with a recommendation for adoption by the Mason County Planning Commission after a public hearing on October 20, 1997; and

WHEREAS, a State Environmental Policy Act Determination of Nonsignificance (DNS) was issued on these amendments on September 22, 1997; and

WHEREAS, the Board has held a public hearing on November 25 1997 and January 20, 1998, and made findings of fact, ATTACHMENT A, based on the record before it;

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of County Commissioners of Mason County hereby approves and adopts the development regulations described by ATTACHMENT B, to become effective at the end of the moratorium established by Resolution 132-97, said Resolution 132-97 to be rescinded, effective on 3/3/1998, 1998.

DATED this 20th day of January, 1998.

BOARD OF COUNTY COMMISSIONERS
Mason County, Washington

John A. Bolender, Chair

Mary Jo Cady, Commissioner

Cynthia D. Olsen, Commissioner

ATTEST:

Rebecca S. Rogers
Clerk of the Board

APPROVED AS TO FORM:

Prosecuting Attorney

ATTACHMENT A - MASON COUNTY ORDINANCE NO. 5 - 98
Standards for Telecommunications Antennas and Towers

FINDINGS OF FACT

1.
Under consideration is a proposal ordinance to establish development regulations which will provide sufficient definitive criteria with which the county can properly evaluate and condition the siting of wireless communication facilities.

2.
The proposal was sent with a recommendation for adoption by the Mason County Planning Commission after a public hearing on October 20, 1997.

3.
A State Environmental Policy Act Determination of Nonsignificance (DNS) was issued on these amendments on September 22, 1997. The comment period ended October 7, 1997. No comments were received on the SEPA determination. The Department of Community Development has determined that amendments in the final version do not have significant adverse environmental impact and that therefore the DNS stands.

4.
The record reviewed by the Planning Commission includes the memorandum prepared by the Department of Community Development, dated October 20, 1997, the previous drafts of the proposal, comments received, the SEPA checklist and determination, and other materials on the issued transmitted to the Planning Commission.

5.
The Board of Commissioners held a public hearing on November 25, 1997, and considered the testimony given along with the record before it. The hearing was continued on January 20, 1998 to consider several possible modifications.

6.
As discussed in the staff reports of November 25, 1997 and January 20, 1998, the proposal is consistent with and balances the goals of the Growth Management Act and is consistent with and implements the Mason County Comprehensive Plan.

From the preceding findings and the record before the Board, it is hereby concluded that the proposal, with those modifications, should be adopted.

Chair, Mason County Board of Commissioners

1/20/98
Date

Attachment B, Ordinance # 5-98

MASON COUNTY, WASHINGTON
STANDARDS FOR TELECOMMUNICATIONS ANTENNAS AND TOWERS

ORDINANCE NO. 5-98

1. **Definitions.**

As used in this ordinance, the following terms shall have the meanings as indicated:

a. **"ALTERNATIVE TOWER STRUCTURE"** shall mean man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

b. **"ANTENNA"** shall mean any exterior apparatus designed for telephonic, radio, or television communications through the sending and /or receiving of electromagnetic waves.

c. **"FAA"** shall mean the Federal Aviation Administration.

d. **"FCC"** shall mean the Federal Communications Commission.

e. **"GOVERNING AUTHORITY"** shall mean the governing authority of the County.

f. **"PRE-EXISTING TOWERS AND ANTENNAS"** shall have the meaning set forth in Section 2 (c) of this ordinance.

g. **EXISTING TOWER** shall mean those towers and antennas constructed after the adoption of this ordinance.

h. **"HEIGHT"** shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

i. **"TOWER"** shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopoly towers. The term

includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

j. **"WHIP ANTENNA"** shall mean an omni-directional antenna which is up to 15 feet in height and up to 4 inches in diameter.

2. **Applicability .**

a. **PUBLIC PROPERTY**. Antennas or towers located on property owned, leased, or otherwise controlled by the governing authority shall be exempt from the requirements of this ordinance, provided a license or lease authorizing such antenna or tower has been approved by the governing authority.

b. **AMATEUR RADIO**. This ordinance shall not govern structures and facilities maintained and operated by amateur radio operators for personal use consistent with applicable state and federal regulations.

c. **PRE-EXISTING TOWERS AND ANTENNAS**. Any tower or antenna existing prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 3.e. and 3.f. Any such towers or antennas shall be referred to in this ordinance as "pre-existing towers" or "pre-existing antennas".

d. **RECEIVE-ONLY ANTENNAS**. This ordinance shall not govern any tower, or installation of any antenna, that is under seventy (70) feet in height and is used exclusively for receive only antennas.

3. **General Guidelines and Requirements.**

a. **PURPOSE AND GOALS**. The purpose of this ordinance is to establish general guidelines for the siting of towers and antennas. The goals of this ordinance are to: (1) encourage the location of towers in Rural Areas and Long Term Commercial Forest Lands as described in the Mason County Comprehensive Plan and Development Regulations and minimize the total number of towers throughout the county, (2) encourage strongly the joint use of new and existing tower sites, (3) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the county is minimal, (4) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas, and (5) enhance the

ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.

b. **PRINCIPAL OR ACCESSORY USES.** Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimension of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

c. **INVENTORY OF EXISTING SITE.** Each applicant for an antenna and or tower shall provide to the Mason County Department of Community Development an inventory of its existing towers that are within the jurisdiction of the governing authority including specific information about the location, height, and design of each tower. The Department of Community Development may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Department of Community Development is not, by sharing this information, in any way representing or warranting that such sites are available or suitable.

d. **AESTHETICS; LIGHTING**. The guidelines set forth in this section shall govern the location of all towers, and the installation of all antennas, governed by this ordinance; provided, however, that the governing authority may waive these requirements if it determines that the goals of this ordinance are better served thereby.

(1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.

(2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.

(3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobstructive as possible.

(4) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

e. **FEDERAL REQUIREMENT.** All towers must meet or exceed current standards and regulators of FAA, the FCC, any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas, governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.

f. **BUILDING CODES; SAFETY STANDARDS.** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the governing authority concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within said thirty (30) days, the governing authority may remove such tower at the owner's expense.

g. **SECURITY FENCING .** Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device. Alternative towers shall be equipped with appropriate security and anti-climbing protections.

4. **PERMITTED USES.**

a. **GENERAL.** The uses listed in this Section 4 are deemed to be permitted uses and shall not require administrative review or a special use permit. Nevertheless, all such uses shall comply with Sections 3.d., 3.e., and 3.f. of this ordinance and all other applicable ordinances.

b. **SPECIFIC PERMITTED USES.** The following uses are specifically permitted:

(1) Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in the Rural Area or Long Term Commercial Forest Land provided, however, that such tower shall be set back a distance equal to the height of the tower from an adjoining property line, unless an easement has been granted by the adjoining property owner(s). Also, provided that the tower or antenna is no higher than 90 feet for one user, 120 feet for two users and 150 feet for three users. Also, provided that the Department of Community Development may waive this height limit by up to 10% for the placement of whip antennas where there is little visual impact.

(2) Installing an antenna on an existing structure other than a tower (such as a building, sign, light pole, water tower, or other free-standing nonresidential structure) that is fifty (50)ft in height or greater, so long as said additional antenna adds no more than twenty (20) feet to the height of said existing structure.

(3) Installing an antenna on an existing structure other than a tower(such as a building, sign, light pole, water tower, or other free-standing nonresidential structure) that is less than fifty (50) feet in height so long as said additional antenna adds no more than five feet or 40 percent (whichever is greater) to the height of said existing structure.

(4) Installing an antenna on any existing tower of any height, so long as the addition of said antenna adds no more than twenty (20) feet to the height of said tower, provided, that such specific permitted use shall not include the placement of additional buildings or other supporting equipment used in connection with said antenna; provided, however, that the proposed height of the tower is no more than the distance to the nearest adjoining property line,

unless an easement has been granted by the adjoining property owner(s).

(5) Locating a tower or antenna or alternative structure under 35 feet in height provided that the total height of the structure is no more than the distance to the nearest adjoining property line, unless an easement has been granted by the adjoining property owner(s).

5. ADMINISTRATIVE APPROVALS.

a. GENERAL

(1) The Mason County Department of Community Development may administratively approve the uses listed in this section.

(2) Each applicant for administrative approval shall apply to the Department of Community Development, providing the information set forth in Sections 6.b. and 6.d. of this ordinance.

(3) The Department of Community Development shall respond to each such application within sixty (60) days after receiving a completed application by either approving or denying the application.

(4) In connection with any administrative approval the Department of Community Development may, in order to encourage shared use, administratively waive a required setback requirement by up to fifty percent (50%). In cases where there is little visual impact, the Department of Community Development may administratively waive the height limit on towers by up to 10% for the placement of whip antennas.

(5) If an administrative approval is denied, the applicant may appeal said denial in accordance with the provisions set forth in the Mason County Development Code, Title 15.

b. SPECIFIC ADMINISTRATIVELY APPROVED USES.

The following uses may be approved by the Department of Community Development after conducting an administrative review:

(1) Installing an antenna on an existing structure other than a tower (such as a building, sign, light pole, water tower, or other free

standing nonresidential structure) that is less than fifty (50) feet in height, so long as such addition adds more than five feet but not more than twenty (20) feet to the height of the existing structure.

(2) Installing an antenna on an existing tower of any height, including a pre-existing tower and further including the placement of additional buildings or other supporting equipment used in connection with said antenna, so long as the addition of said antenna adds no more than twenty (20) feet to the height of said existing tower; provided, however, that the total height of the tower is no greater than the distance to the nearest adjoining property line, unless an easement has been granted by the adjoining property owner(s).

(3) Locating any alternative tower structure ~~in~~ in an Urban Area, Rural Activity Center or Rural Community Center which is determined by the Department of Community Development to be in conformity with the goals set forth in Section 3.a. of this ordinance; provided, however, that said structure is no higher than 70 feet.

6. SPECIAL USE PERMITS.

a. GENERAL

The following provisions shall govern the issuance of special use permits (special use permits will be considered a Type III application and will be processed per Title 15, Mason County Development Code, Section 15.09.050):

(1) If the tower or antenna is not a permitted use under Section 4 of this ordinance or permitted to be approved administratively pursuant to Section 5 of this ordinance, then a special use permit shall be required for the construction of a tower or the placement of an antenna.

(2) In granting a special use permit, the governing authority may impose conditions to the extent the governing authority concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

(3) Engineering information that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.

b. **INFORMATION REQUIRED**

Each applicant requesting a special use permit under this ordinance shall submit a scaled site Plan and a scaled elevation view and other supporting drawings, calculations, and other documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, and other information deemed by the governing authority to be necessary to assess compliance with this ordinance.

c. **FACTORS CONSIDERED IN GRANTING SPECIAL USE PERMITS**

The governing authority shall consider the following factors in determining whether to issue a special use permit, although the governing authority may waive or reduce the burden on the applicant of one or more of these criteria if the governing authority, concludes that the goals of this ordinance are better served thereby.

(1) Height of the proposed tower;

(2) Proximity of the tower to residential structures and residential district boundaries;

(3) Nature of uses on adjacent and nearby properties;

(4) Surrounding tree coverage and foliage;

(5) Surrounding topography;

(6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and

(7) Proposed ingress and egress; and

(8) Availability of suitable existing towers and other structures as discussed in Section 6.d of this ordinance.

d. **AVAILABILITY OF SUITABLE EXISTING TOWERS OR OTHER STRUCTURES**

No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the governing authority that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:

(1) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.

(2) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

(3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers of structures would cause interference with the applicant's proposed antenna.

(5) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(6) The applicant demonstrates that there are other limiting factors that render existing towers and structures unreasonable.

e. **SETBACKS AND SEPARATION**

The following setbacks and separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the governing authority may reduce the standard setbacks and separation requirements, if the goals of this ordinance would be better served thereby.

(1) Towers must be set back a distance equal to the height of the tower from the nearest adjoining property line, unless an easement has been granted by the adjoining property owner(s).

(2) Towers, guys, and accessory facilities must satisfy the minimum setback requirements established as part of the Comprehensive Plan (including those established in the development regulations, interim resource ordinance, shorelines master program, etc.).

(3) Towers over ninety (90) feet in height shall be clustered whenever possible. If clustering is not possible then towers over ninety (90) feet in height shall not be located within one-quarter mile from any existing tower that is over ninety (90) feet in height. Clustering of facilities shall allow a minimum separation between the base of the towers or structures that is no more than necessary for access, structural reasons, or to prevent interference in the facility's operations.

f. **LANDSCAPING**

The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the governing authority may waive such requirements if the goals of this ordinance would be better served thereby.

(1) Tower facilities shall be landscaped with a buffer of plant material that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound with three (3) canopy trees, six (6) under story trees, and nine (9) shrubs planted per 100 linear feet of buffer (see the Mason County Development Regulations for further information).

(2) In locations where the visual impact of the tower would be minimal, the landscaping requirements may be reduced or waived altogether.

(3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

7. REMOVAL OF ABANDONED ANTENNAS AND TOWERS.

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove same within ninety (90) days of receipt of notice from the governing authority notifying the owner of such abandonment. If such antenna or tower is not removed within said ninety (90) days, the governing authority may remove such antenna or tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.