

BOARD OF YAKIMA COUNTY COMMISSIONERS

ORDINANCE NO. 10-2009

IN THE MATTER OF AMENDING YAKIMA COUNTY CODE TITLE 15 PERTAINING TO AMATEUR RADIO, COMMUNICATION AND PERSONAL WIND ENERGY TOWERS

WHEREAS, RCW 36.70A.130(4) requires that Yakima County, a “fully planning” county, shall update its comprehensive plan and development regulations, as necessary, to reflect local needs, new data, and current laws; and,

WHEREAS, under RCW 36.70A.130, the plan and development regulations are subject to continuing review and evaluation; and,

WHEREAS, as part of its comprehensive plan and development regulations update process, the County has established a public participation program through YCC 16B.10, which sets forth requirements for ensuring adequate public notification and opportunities for comment and participation in the amendment process; and,

WHEREAS, the annual meeting of the Yakima County Planning Commission (Planning Commission) held on May 5, 2008, included an opportunity to suggest text amendment items for docketing; and,

WHEREAS, at the meeting the President of the Yakima Amateur Radio Club, formally requested amending the Yakima County Zoning Ordinance (YCC Title 15) pertaining to “Amateur Radio Towers” and “Amateur Radio Antenna Support Structures;” and,

WHEREAS, the Planning Commission docketed the matter for further consideration; and

WHEREAS, Yakima County Public Services – Planning Division Staff (staff) has reviewed the proposal and made recommendation to the Yakima County Planning Commission; and,

WHEREAS, the Planning Commission held a public hearing on this matter on September 24, 2008, and having carefully considered the applicant’s justification, the staff recommendation, and the written and oral testimony in its deliberations, recommended that the Board of County Commissioners approve staff’s Amateur Radio Tower and Antenna proposal, with an additional recommendation to waive the fees for Type I and Type II uses as requested by the amateur radio proponents as noted in its *Findings of Fact and Recommendation*, dated November 19, 2008 (Exhibit 1 attached hereto); and,

WHEREAS, upon increased public interest in personal wind energy turbines that are also mounted on towers or support structures staff drafted additional regulatory language for personal wind tower uses to resolve tower-related uses within the zoning ordinance; and,

WHEREAS, Staff submitted draft regulatory language for all tower uses within Yakima County, including amateur radio ('HAM'), communication and personal wind energy towers and their associated support structures; and,

WHEREAS, the Board held a duly advertised public hearing on December 1, 2009 at the Yakima City Hall to hear testimony on Ordinance 10-2009 to consider testimony on the request to amend the Yakima County Zoning Ordinance (YCC Title 15) to address amateur radio ('HAM'), communication and personal wind energy towers and their associated support structures; and,

WHEREAS, the Board reviewed the proposed changes to the Yakima County Zoning Ordinance (YCC Title 15), and continued the public hearing to January 12, 2010 to allow proponents for personal wind energy towers and the amateur radio operators to meet with staff to work out changes to the text that would better accommodate technical requirements; and,

WHEREAS, the Board held its public hearing on January 12, 2010, at which time staff presented revised draft amendments after consultation with proponents; and

WHEREAS, the Board took public testimony on the proposal and directed staff to prepare a final version for public hearing; and,

WHEREAS, public notice of the public hearing on the final version has been given setting February 2, 2010 to consider public testimony on the revised version, deliberate and adopt the amendments to YCC Title 15 pertaining to amateur radio, communication towers and personal wind energy towers; and,

WHEREAS, the Board, having carefully considered the Amateur Radio Operators proposal, the Planning Commission's findings and recommendations, staff recommendations, public testimony and the written and oral testimony in its deliberations; now, therefore,

BE IT HEREBY ORDAINED BY THE BOARD OF YAKIMA COUNTY COMMISSIONERS:

Section 1. Findings. The Board of Yakima County Commissioners (the Board) finds that all RCW 36.70A (the Growth Management Act or GMA) and YCC Title 16B.10 prerequisites for the review and evaluation of the changes to development regulations, as well as the minimum requirements for ensuring adequate public notification and opportunities for comment and participation in the amendment process, have been met. The Board makes the following findings:

- A. Planning Commission Recommendation. The Board hereby adopts the *Findings of Fact and Recommendation* of the Planning Commission (Exhibit 1 attached hereto). During their deliberations the Planning Commission recommended to approve staff's Amateur Radio Tower and Antenna proposal. A subsequent motion was voted on to recommend approval of staff's modification of the applicant's proposal with a recommendation to the Board to eliminate the Type I and Type II application fee in a vote of 5-1.
- B. Planning Division Recommendation. The Board adopts the Planning Division recommendations as outlined in Section 2 below.

- C. State Environmental Policy Act (SEPA). The SEPA Responsible Official has reviewed the potential adverse environmental impacts of the proposed amendments in accordance with the provisions of YCC Title 16, culminating in a Final Determination on December 10, 2008 to retain his *Adoption of Existing Environmental Documents and a Mitigated Determination of Non-significance* issued on November 21, 2008. The Board finds that environmental review is complete and adequate.
- D. Analysis of Cumulative Impacts. The cumulative impacts of the amendments to the Yakima County Zoning Ordinance have been considered as part of the review process in reaching the decisions in this ordinance.
- E. Legislative Intent. The Board finds that Amateur radio, Communication and Wind Towers and Support Structure use requires zoning review that is responsive to the location, size of the structure and the interests of adjoining property owners. The Board finds and concludes that the public interest is served by adoption of the amendments to YCC Title 15 as contained in Section 2 below.

Section 2. YCC Title 15 Zoning Text Amendment. The Yakima County Zoning Ordinance (YCC, adopted by YCC 15.16.010 (1) and subsequently amended, is hereby amended as depicted by the following.

- A. Add the following new definitions to YCC Title 15, Chapter 15.08 (underlined is new text ~~strikethrough is deleted~~):

15.08.077 Amateur Radio Antenna and Support Structure. "Amateur radio antenna and support structure" means any device for receiving or transmitting radio frequency signals, including any tower, pole, mast, tree, or guy wire, used to support an amateur radio antenna. (see 15.18.030(v))

15.08.083 Anemometer. "Anemometer" means a research device for measuring wind speed and is regulated as a wind tower for the purposes of this title. An anemometer is considered a temporary use when removed after a period of 3 years or less. (see 15.18.030(v))

15.08.175 Communication Tower. "Communication tower" means any tower, pole, mast, whip, antenna, or any combination thereof used for radio, television, cellular or microwave telecommunications broadcast transmission or line-of-sight relay, but not including amateur radio antennae and support structures. (see 15.18.030(v))

15.08.502 Personal Wind Energy Tower. "Personal wind energy tower" means a system designed as providing a source of electrical power to an existing or new building or facilities, wherein the power generated is used primarily for on-site consumption and generates 25kW or less. The system consists of a vertical or horizontal wind turbine and associated controls and may include a tower. (see 15.18.030(v))

B. Replace the existing regulatory note (v) to Table 15.18 in its entirety with the following text:

- (v) 15.18.030 (v) Towers (Amateur radio, communication, anemometer and personal wind energy) and support structures as defined in 15.08.077, 15.08.083, 15.08.175 and 15.08.502
- (1) Towers and support structures, exclusive of wind turbines or antennae placed on them:
- (a) That are under the height restriction of a zoning district with a specific height standard, are self-supporting and have a 2 foot or less radius from the center axis of the base of the tower, and have antennae, rotors and other attachments with a diameter of 9.0 feet or less, shall be subject to Type I review. [35': FW, MR, VR, RT, R1, R2; 45': R3, RS, B1, B2, C, HC]
- (b) That are above the height restrictions of a zoning district with a specific height standard or are not self-supporting or have a 2 foot or greater radius from the axis of the base of the tower, and have antennae, rotors and other attachments with a diameter of greater than 9.0 feet, and the height of the tower is 70.0 feet or less, the tower shall be subject to Type II review.
- (c) That are within a zoning district that has a specific height standard and do not qualify for a Type I or Type II are subject to Type III review.
- (d) That are located in the R/ELDP, AG, I, or MIN zoning districts, where height of buildings or structures is not specified, are self-supporting, have a 2 foot or less radius from the center axis of the base of the tower, and have antennae, rotors and other attachments with a diameter of 9.0 feet or less, and the height of the tower is 70.0 feet or less, the tower shall be subject to Type I review.
- (e) That are located in the R/ELDP, AG, I, or MIN zoning districts, where height of buildings or structures is not specified, are not self-supporting or 2 foot or greater radius from the center axis of the base of the tower, or and have antennae, rotors and other attachments with a diameter of greater than 9.0 feet, and the height of the tower or support structure is 70.0 feet or greater, the tower shall be subject to Type II review.
- (f) That are located in the R/ELDP, AG, I, or MIN zoning districts, where height of buildings or structures is not specified, tower height is 100.0 feet or greater, the tower shall be subject to Type III review.

- (g) That propose to co-locate on existing towers, buildings, structures and facilities without an increase in height and have antennae, rotors and other attachments with a diameter of less than 9.0 feet, the tower shall be subject to Type I review.
- (2) All towers and items affixed thereto, guy wires, or supports shall meet the setback standards of the zoning district in which they are located. Greater setbacks may be required by the Administrative Official.
- (3) All towers and items affixed thereto, guy wires or supports shall adhere to the requirements of the Airport Safety Overlay (ASO), when applicable.
- (4) Towers that are located in R/ELDP, AG, I, MIN, and qualify as a Type III use, but will be removed within 3 years, are considered temporary in nature and may be reviewed as a Type II use by the Administrative Official. An extension of one year may be requested by the applicant. No more than two extensions will be granted by the Administrative Official.
- (5) With consideration to engineering and structural requirements, towers shall be subject to the following visual compatibility standards:
- (a) Towers, rotors/turbines and antenna(e) should reflect the visual characteristics of the structure to which it is attached, or the surrounding environment in which it is placed. This should be achieved through the use of colors and materials, as appropriate. When located on structures such as buildings or water towers, the placement of the antenna or rotor/turbine on the structure should reflect the following order of priority in order to minimize visual impact:
- (i) A location as close as possible to the center of the structure; and
- (ii) Along the outer edges or side-mounted, provided that, in this instance, additional means such as screens should be considered and may be required on a case-by-case basis; and
- (iii) When located on the outer edge or side-mounted, be placed on the portion of the structure less likely to be seen from adjacent lands containing, in descending order of priority: existing residences, public parks and open spaces, and public roadways.
- (b) To the extent that there is no conflict with the color and lighting requirements of the Federal Communications Commission and the Federal Aviation Administration for aircraft safety purposes, transmission support structures shall be designed to blend in with existing surroundings to the extent feasible. This should be achieved through the use of compatible colors and materials, and alternative site placement to allow the use

of topography, existing vegetation or other structures to screen the proposed transmission support structure from adjacent lands containing, in descending order of priority: existing residences, public parks and open spaces, and public roadways.

- (c) The provisions of this subsection (5) may be modified by the Administrative Official in order to achieve greater levels of screening than that which would be available by using the stated setback during the course of the review process.
- (6) Towers and support structures shall be removed within 1 year of the date of ceasing use or operation. Antenna shall be removed from support structures within 180 days after the antenna is no longer operational.
- (7) Turbines on personal wind energy towers shall be designed, installed and operated so that noise generated by the system shall not exceed fifty decibels (50 dBA) measured from the nearest property line, except during short term events such as utility outages and severe wind storms.
- (8) Towers will be located no nearer than 50 feet from an edge of right-of-way or easement of a public or private road.
- (9) No more than one tower, array, or rotor/turbine per parcel in residential districts (RT, RS, R-1, R-2, R-3), and no more than 2 towers, arrays, or rotors/turbines per parcel in all other zoning districts shall be permitted. More than 2 towers, arrays, or rotors/turbines shall be subject to Type III review.
- (10) Support structures and towers may include an equipment enclosure, structure, shelter, cabinet, box or vault designed for and used to house and protect the electronic equipment necessary and/or desirable for processing wireless communications signals and data, including any provisions for air conditioning, ventilation, or auxiliary electricity generators.

C. Add the following language to the existing regulatory note 15.18.030 (v) in Table 15.18:

ZONE:	AG	FW	MR	VR	R/ELDP	RT	R1	R2	R3	RS	B1	B2	C	HC	I	MIN
Amateur radio, communication, anemometer and personal wind energy towers* and support structures, commercial radio & television transmitters, receivers, relay stations & broadcasting systems (v)	See 15.18.030(v)															

Section 3. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This ordinance shall be effective at 11:59 PM on February 2, 2010.

ADOPTED this 2nd day of February, 2010.

BOARD OF YAKIMA COUNTY COMMISSIONERS


Michael D. Leita, Chairman

Attest: Christina Steiner


Clerk of the Board



EXCUSED
Kevin J. Bouchey, Commissioner


Rand Elliott, Commissioner
Constituting the Board of County Commissioners for Yakima County, Washington

APPROVED AS TO FORM:


Deputy Prosecuting Attorney