

Introduced by: CDD
Requested by: P&Z Commission
Drafted by: CDD
Introduced on: 03/01/2018
Public Hearing Date: 03/22/2018
Adopted on: 03/22/2018

**KODIAK ISLAND BOROUGH
ORDINANCE NO. FY2018-17**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING
VARIOUS SECTIONS OF TITLE 17 TO PROVIDE FOR ADDITIONAL REGULATION OF
COMMUNICATIONS TOWERS (P&Z CASE NO. 18-011)**

WHEREAS, as a second class Borough, the Kodiak Island Borough exercises planning, platting, and land use regulations on an area wide basis pursuant to Chapter 29.40 Alaska Statutes; and

WHEREAS, KIBC 17.205.010 provides that “Whenever the public necessity, convenience, general welfare or good zoning practice requires, the assembly may, by ordinance and after report thereon by the commission and public hearing as required by law, amend, supplement, modify, repeal or otherwise change these regulations and the boundaries of the districts”; and

WHEREAS, the need for communications infrastructure has grown over the past several years as consumer demand for cellular and data services has increased; and

WHEREAS, KIBC title 17 (Zoning) does not explicitly provide for the regulation of communications towers; and

WHEREAS, providers or property owners seeking to lease, install, update, or modify existing communications technology and infrastructure do not have clear guidance in how communications towers are regulated locally; and

WHEREAS, the public necessity and general welfare of the community will be better served by amending the code to include standardized permitting requirements for communications towers and to list them as a conditional use in certain zoning districts; and

WHEREAS, the Planning and Zoning Commission discussed this issue at work sessions on February 8, 2017, March 9, 2017, April 12, 2017, August 9, 2017, September 13, 2017, October 11, 2017, November 8, 2017, and January 17, 2018; and

WHEREAS, the Planning and Zoning Commission directed the KIB Community Development Department to hold a public meeting on the subject, and a meeting was held on June 28, 2017; and

46 **WHEREAS**, the Planning and Zoning Commission held public hearing on this issue at their
47 January 24, 2018 meeting.

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49 **NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND**
50 **BOROUGH THAT:**

51
52 **Section 1:** This ordinance is of a general and permanent nature and shall become a part of the
53 Kodiak Island Borough Code of Ordinances; and

54
55 **Section 2:** That Chapters 17.25 (Definitions), 17.35 (W – Watershed District), 17.45 (NU – Natural
56 Use District), 17.90 (B – Business District), 17.95 (RNC – Rural Neighborhood Commercial
57 District), 17.100 (UNC – Urban Neighborhood Commercial District), 17.105 (I – Industrial District),
58 17.110 (RB – Retail Business District), 17.120 (LI – Light Industrial District), 17.130 (PL – Public
59 Use Lands District), and 17.17.145 (Height Limitations) of the Kodiak Island Borough Code of
60 Ordinances is amended to read as follows:

61
62 **Chapter 17.25**
63 **DEFINITIONS**
64

65 **17.25.020 A definitions.**

66 “Accessory dwelling unit (ADU)” means an additional dwelling unit attached to or within a single-
67 family residence or within a detached accessory structure or as a separate structure on the
68 same lot as the single-family residence. ADUs have a separate entrance and exit and contain
69 kitchen, bathroom, and sleeping facilities.

70 “Accessory equipment” means any equipment serving or being used in conjunction with
71 a personal wireless service facility or mount. This includes utility or transmission
72 equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets
73 and storage sheds, shelters, or similar structures.

74 “Agricultural activities” means the production, keeping, or maintenance, for sale, lease, or
75 personal use, of plants and animals useful to people. This does not include any uses involving
76 or related to commercial marijuana activities.

77 “Airport elevation” means the established elevation of the highest point of the usable landing
78 area.

79 Airport, Municipal. “Municipal airport” means the City of Kodiak Municipal Airport and Lilly Lake.
80 Airport, Utility. “Utility airport” means any airport in the borough designed and/or constructed to
81 serve aircraft in approach category A (speed less than 91 knots).

82 “Alley” means a public way designed and intended to provide only a secondary means of
83 access to any property abutting thereon.

84 “Alteration” means any change, addition, or modification in the construction, location, or use
85 classification.

86 “Antenna” means the equipment from which wireless radio signals are sent and received
87 by a personal wireless service facility.

88 Apartment House. For “apartment house,” see “Dwelling, multiple-family,” KIBC 17.25.050.

89 “Approach surface” means an approach surface longitudinally centered on the extended runway
90 centerline and extending outward and upward from each end of a runway. The inner edge of the

91 approach surface is the same width as the runway and it expands uniformly to a width of 1,500
92 feet of each end of the runway. The approach surface extends for a horizontal distance of 5,000
93 feet at a slope of 20:1. No building or structure may be constructed or erected nor may any
94 other object be stored or placed in such a manner as to protrude into the approach surfaces.

95 A. The approach surfaces for the municipal airport extend upward and outward from the
96 south end of the existing lake surface (towards Larch Street) and the north end of the
97 gravel runway (Von Scheele Way) only.

98 “Automobile wrecking” means the dismantling of used motor vehicles or trailers or the storage or
99 sale of parts from dismantled or partially dismantled, obsolete, or wrecked vehicles.

100
101 **17.25.040 C definitions.**

102 “Clear zone” means that area within 50 feet from and on the outside of both edges of the municipal
103 airport gravel runway and all of the water area of Lilly Lake, excepting the parking zone, within
104 which no structure may be constructed, erected, or placed and no vehicle or other object may be
105 parked, stored, or placed. The “clear zone” also means that area 140 feet wide extending from
106 the southerly end of Lilly Lake to the Larch Street right-of-way.

107 “Commercial fishing” means fishing activities involving the harvest and sale of seafood products
108 carried out for a profit.

109 “Commercial livestock grazing” means rearing and grazing of livestock (horses, cattle, buffalo,
110 elk, reindeer, llamas) for slaughter and commercial sale of meat, for hunting, or for rent for
111 recreational uses, when these activities are carried out for profit.

112 “Communications tower (tower)” means a structure that is built for the sole or primary
113 purpose of supporting equipment for the transmission and/or reception of radio frequency
114 signals, other wireless communications, or meteorological purposes, and usually
115 consisting of an antenna or antenna array, transmission cables, equipment cabinets, and
116 their associated facilities.

117 “Conditional use permit” means a method of allowing for flexibility within the zoning regulations
118 by permitting certain specified uses in zoning districts after additional controls and safeguards are
119 applied by the commission to ensure their compatibility with permitted principal uses.

120 “Coverage” means that percentage of the total lot area covered by the building area. [Ord. 2001-
121 05 §2, 2001; Ord. 93-66 §3, 1993; Ord. 87-09-O §7, 1987; Ord. 81-31-O §1, 1981; prior code Ch.
122 5 subch. 2 §9B. Formerly §§17.06.162 – 17.06.170].

123
124 **17.25.170 P definitions.**

125 “Parking zone” means a strip of land 25 feet in width immediately adjacent to the clear zone along
126 the municipal airport and on that side of the clear zone which is farthest from the gravel runway.
127 No structure may be constructed, erected, or placed within the parking zone except motor vehicles
128 and aircraft. Motor vehicles used for storage or living or sleeping accommodations are not
129 permitted within parking zones. “Parking zone” also means a water area 30 feet in width on Lilly
130 Lake, measured out from the existing shoreline of the lake, within which seaplanes may be parked
131 or stored.

132 “Person” means a natural person, his heirs, executors, administrators, or assigns, and also
133 includes firm, partnership, or corporation, or their successors or assigns, or the agent of any of
134 the aforesaid.

135 “Personal Wireless Service Facility” means any tower, structure, or other equipment
136 intended for a primary use of providing commercial or public wireless, radio, microwave,
137 or other communication services and functionality.

138 “Premises” means a lot, together with all buildings and structures thereon.
139

140 **Chapter 17.35**

141 **W – Watershed District**

142 **17.35.030 Conditional uses.**

143 The following land uses and activities may be allowed by obtaining a conditional use permit in
144 accordance with the provisions of Chapter 17.200 KIBC:

- 145
146 A. Communication facilities **and towers**; and
147 B. Recreational uses not requiring structures for overnight habitation.

148
149 **Chapter 17.45**

150 **NU – Natural Use District**

151
152 **17.45.040 Conditional uses.**

153 The following land uses and activities may be allowed by obtaining a conditional use permit in
154 accordance with the provisions of Chapter 17.200 KIBC:

- 155
156 A. Communication facilities **and towers**;
157 B. Parks and recreational support structures, including related equipment, facilities, and
158 structures (e.g., playground equipment, bathroom facilities, picnic shelters, parking lots, and
159 other paved areas, etc.);
160 C. Public recreational cabins;
161 D. Road and utility installations; and
162 E. Structures which enhance the intent of the natural use district (e.g., fish, wildlife, or habitat
163 enhancement and/or rehabilitation structures, fish ladders, hatcheries, etc.).

164
165 **Chapter 17.90**

166 **B – Business District**

167
168 **17.90.030 Conditional uses.**

169 The following land uses and activities may be allowed by obtaining a conditional use permit in
170 accordance with the provisions of Chapter 17.200 KIBC:

- 171
172 A. Churches;
173 B. Hospitals;
174 C. Recreational vehicle parks;
175 D. Mobile home parks;
176 E. Warehouses;
177 F. Marijuana cultivation, limited; ~~and~~
178 G. Marijuana cultivation, standard-; **and**
179 **H. Communications towers.**

180
181 **Chapter 17.95**
182 **RNC – Rural Neighborhood Commercial District**
183

184 **17.95.040 Conditional uses.**

185 The following land uses and activities may be allowed by obtaining a conditional use permit in
186 accordance with the provisions of Chapter 17.200 KIBC:

- 187
188 A. Institutional facilities (e.g., hospitals, fire stations, group homes, correctional facilities, etc.);
189 B. Utility and service uses (e.g., substations); ~~and~~
190 C. Recreational vehicle parks; ~~and~~
191 **D. Communications towers.**
192

193 **Chapter 17.100**
194 **UNC – Urban Neighborhood Commercial**
195

196 **17.100.040 Conditional uses.**

197 The following land uses and activities may be allowed by obtaining a conditional use permit in
198 accordance with the provisions of Chapter 17.200 KIBC:

- 199
200 A. Animal hospitals, veterinary clinics, and boarding kennels;
201 B. Automobile service stations;
202 C. Churches;
203 D. Commercial recreation facilities (e.g., racquetball courts, health clubs, ice rinks, etc.);
204 E. Institutional facilities (e.g., hospitals, fire stations, group homes, correctional facilities, etc.);
205 F. Utility and service uses (e.g., substations, etc.); ~~and~~
206 G. Recreational vehicle parks; ~~and~~
207 **H. Communications towers.**
208

209 **Chapter 17.105**
210 **I – Industrial District**
211

212 **17.105.020 Conditional uses.**

213 The following uses may be permitted by obtaining a conditional use permit in accordance with
214 the provisions of Chapter 17.200 KIBC:

- 215
216 A. Acetylene gas manufacture or storage;
217 B. Ammonia, bleaching powder or chlorine manufacture;
218 C. Cement, concrete, lime and plaster manufacture;
219 D. Chemical bulk storage and sales;
220 E. Garbage disposal sites, dumps and sanitary landfills;
221 F. Petroleum or flammable liquid production, refining or storage; ~~and~~
222 G. Recreational vehicle parks; ~~and~~
223 **H. Communications towers.**
224

225 **Chapter 17.110**
226 **RB – Retail Business District**

227
228 **17.110.040 Conditional uses.**

229 The following land uses and activities may be allowed by obtaining a conditional use permit in
230 accordance with the provisions of Chapter 17.200 KIBC:

- 231
232 A. Automobile and boat sales, storage, and repair;
233 B. Churches;
234 C. Institutional facilities (e.g., hospitals, fire stations, group homes, correctional facilities, etc.);
235 D. Outdoor storage, when screened by a sight-obscuring fence a minimum of six feet in height;
236 E. Utility and service uses (e.g., substations, etc.);
237 F. Warehouses;
238 G. Wholesaling and distributing operations (excluding bulk fuel operations);
239 H. Recreational vehicle parks;
240 I. Marijuana cultivation, limited; ~~and~~
241 J. Marijuana cultivation, standard; ~~and~~
242 **K. Communications towers.**

243
244 **Chapter 17.120**
245 **LI – Light Industrial District**

246
247 **17.120.040 Conditional uses.**

248 The following land uses and activities may be allowed by obtaining a conditional use permit in
249 accordance with the provisions of Chapter 17.200 KIBC:

- 250
251 A. New airports (when a facility is granted a CUP, all aviation-related uses will be considered
252 permitted uses);
253 B. Institutional facilities (e.g., hospitals, fire stations, group homes, correctional facilities, etc.);
254 C. Junkyards and salvage yards; ~~and~~
255 D. Recreational vehicle parks; ~~and~~
256 **E. Communications towers.**

257
258 **Chapter 17.130**
259 **PL – Public Use Lands District**

260
261 **17.130.030 Conditional uses.**

262 The following land uses may be allowed by obtaining a conditional use permit in accordance
263 with the provisions of Chapter 17.200 KIBC:

- 264
265 A. Airports;
266 B. Correctional facilities;
267 C. Dormitories;
268 D. Governmental maintenance and service facilities and storage yards;
269 E. Natural resource extraction;

- F. Solid waste disposal sites;
- G. Radio and television transmitters; and
- H. Recreational vehicle parks; **and**
- I. Communications towers.**

Chapter 17.145

COMMUNICATION TOWERS AND OTHER TALL STRUCTURES

Sections:

- 17.145.010 Height limitations.
- 17.145.020 Airport height limitations.
- 17.145.030 Commercial use of communications towers.**
- 17.145.040 Exemptions.**
- 17.145.050 Communications towers as conditional uses.**
- 17.145.060 Application requirements.**
- 17.145.070 Approval criteria.**

17.145.010 Height limitations.

The height limitations contained in this title do not apply to spires, belfries, cupolas, chimneys, antennas, water tanks, ventilators, elevator housing, or other similar structures placed above the roof level which are required for the operation and maintenance of a building.

17.145.020 Airport height limitations.

A maximum height limitation of 35 feet is established for all structures on lands contiguous to or adjoining a utility airport, Lilly Lake and the Kodiak Municipal Airport. This height limitation applies even if the zoning district in which the property is located permits a greater height limitation.

A. For all lands contiguous to or adjoining a utility airport, no structures or equipment may be located in such a manner that any portion of a structure or piece of equipment projects into the runway clear zone or approach surfaces.

B. For all lands contiguous to or adjoining Lilly Lake and the Kodiak Municipal Airport, no structures or equipment may be located in such a manner that any portion of a structure or piece of equipment projects into the approach surfaces or the clear zone.

17.145.030 Commercial use of communications towers.

This chapter, except 17.145.010 and 17.145.020, applies to any communications towers dedicated to commercial or public use as either primary or accessory structures and uses.

17.145.040 Exemptions.

The following structures are exempt from the regulations of this chapter:

A. Facilities owned by or maintained for the use of the United States military;

B. Facilities constructed for private use; and

C. Temporary structures that will stand for no more than 30 days.

17.145.050 Communications towers as conditional uses.

A. Communications towers are a conditional use in the following zoning districts:

1. Chapter 17.35 KIBC, W – Watershed District

2. Chapter 17.45 KIBC, NU – Natural Use District

- 3. Chapter 17.50 KIBC, C – Conservation District
- 4. Chapter 17.55 KIBC, RD – Rural Development District
- 5. Chapter 17.90 KIBC, B – Business District
- 6. Chapter 17.95 KIBC, RNC – Rural Neighborhood Commercial District
- 7. Chapter 17.100 KIBC, UNC – Urban Neighborhood Commercial District
- 8. Chapter 17.105 KIBC, I – Industrial District
- 9. Chapter 17.110 KIBC, RB – Retail Business District
- 10. Chapter 17.120 KIBC, LI – Light Industrial District
- 11. Chapter 17.130 KIBC, PL – Public Use Lands District

B. Communications towers are a prohibited use in all other zoning districts.

17.145.060 Application requirements.

In addition to providing the information specified in this title for conditional uses, an application for a conditional use permit for the construction of a communications tower or placement of a telecommunications antenna on an existing structure other than a tower or antenna previously permitted must include the following information:

A. A copy of the specifications for the proposed structures and antennas, including description of the design characteristics and material;

B. A site plan drawn to scale showing property boundaries, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscaping, and existing land uses on adjacent property;

C. A current map showing locations of all of the applicant’s antennas, facilities, existing towers, and proposed towers within the borough;

D. Names of the owners of the tower, antennas and equipment to be located on the site;

E. Evidence that a valid FCC license for the proposed activity has been issued, if required;

F. A copy of the FAA determination as to whether the tower poses an aviation hazard, including the safety lighting and marking required by FAA, if any, and whether preferences or requests for deviations from such marking and lighting systems were submitted;

G. A written agreement, to remove the tower and/or antenna within 180 days after the tower or antenna is substantially unused for a period of 12 consecutive months;

H. A visual impact analysis that quantifies the amount of visual impact on properties located within 1,000 feet of any proposed tower under 65 feet or within 2,500 feet of any proposed tower over 65 feet. Such analysis should include, to the extent practicable, the visual impact from at least two of the four compass directions, and show the relationship of the tower and its facilities against the massing of surrounding structures, trees, and other intervening visual masses. This analysis will include recommendations to mitigate adverse visual impacts on other properties;

I. An alternative site analysis including the availability of suitable existing towers and other alternative structures or locations for the proposed tower considered by the applicant; and

373 J. Additional information which may be required by the community development
374 department for determination that all applicable laws are met.

375
376 17.145.070 Approval criteria.

377 Within 60 days from application, the planning and zoning commission shall approve,
378 approve with conditions or deny a permit under this section after considering all of the
379 following criteria:

380
381 A. Location and Visual Impact. The proposed communications tower, antenna or
382 accessory structure will be placed in a reasonably available location which will minimize
383 the visual impact on the surrounding area and allow the facility to function in accordance
384 with minimum standards imposed by the applicable communications regulations and
385 applicant's technical design requirements. Conditions may be imposed, including
386 camouflage, screening, vegetative buffers and/or site requirements, to ensure this criteria
387 is met.

388
389 B. Inability to Locate on an Existing Structure. A permit should not be issued unless a
390 proposed antenna and equipment cannot be accommodated and function as required by
391 applicable regulations and applicant's technical requirements without unreasonable
392 modifications on any existing structure or communications tower.

393
394 C. Necessity for Location in a Residential Neighborhood. A permit should not be issued in
395 a residential neighborhood unless the area cannot be adequately served by a facility
396 placed in a nonresidential area for valid technical reasons. Conditions may be imposed to
397 lessen the impact of a communications tower on a residential neighborhood, including
398 limitations on times for maintenance work to be performed, number of vehicles present,
399 yard maintenance, and similar requirements.

400
401 D. Design for Future Use. A new tower must be designed to accommodate additional
402 antennas equal in number to the applicant's present and reasonably foreseeable future
403 requirements.

404
405 E. Collocation. A permit shall be conditioned to require the applicant to make the tower
406 available for use by as many other licensed carriers as can be technically collocated
407 thereon when the use will not result in substantial injury to the owner, or in substantial
408 detriment to the service to the customers of the owners. All licensed carriers shall
409 cooperate with each other in collocating additional facilities upon such towers. All licensed
410 carriers shall exercise good faith in collocating with other licensed carriers and in the
411 sharing of towers, including the sharing of technical information to evaluate the feasibility
412 of collocation.

413
414 F. Illumination. A communications tower may not be illuminated unless otherwise required
415 by state or federal law or regulations or unless evidence has been presented that lighting
416 is necessary to ensure the safety of the public. To prevent direct light reflection on other
417 property, tower structure lighting shall be shielded to the extent permitted by the Federal
418 Aviation Administration.

419
420 G. Distance from Existing Tower. A permit for a proposed tower within 1,000 feet of an
421 existing tower shall not be issued unless the applicant certifies that the existing tower
422 does not meet the applicant's structural specifications and the applicant's technical
423 design requirements, or that a collocation agreement could not be obtained.

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H. Yard Area Requirements. Yards shall be a distance equal to at least 50 percent of the height of the tower from a lot line. The planning and zoning commission may modify this requirement if the tower and equipment will be adequately screened to mitigate its visual impact and no safety hazards are presented.

I. Height. The permitted height of a proposed tower shall be no higher than technically required to satisfy the specific purpose of the tower and will consider the impact on the surrounding uses.

J. Zoning District Standards. Nothing in this section alters the requirements for visibility, fencing, screening, landscaping, parking, access, lot size, exterior illumination, sign, storage, or other general zoning district regulations, except yard and height requirements, of any specific zone. Yard and height requirements in this section shall apply.

K. Design Drawings and Specifications. A permit shall be conditioned to require the applicant to submit design drawings and specifications stamped by a registered professional in the state of Alaska certifying compliance with the building code of the authority having jurisdiction.

L. Compliance with Other Laws. A proposed tower must comply with all local, state, and federal laws.

M. A report from a structural engineer registered in the State of Alaska showing that the tower will contain only equipment meeting FCC rules, the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with ANSI/EIA/TIA 222 (latest revision) standards.

Effective Date: This ordinance takes effect upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS TWENTY THIRD DAY OF MARCH, 2018.**

KODIAK ISLAND BOROUGH

ATTEST:



Daniel A. Rohrer, Mayor



Nova M. Javier, MMC, Clerk

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VOTES:

Ayes: Kavanaugh, Schroeder, Skinner, Smiley, Symmons, Van Daele

Noes: Crow