

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING THE CITY OF OLYMPIA PROJECT PERMIT APPLICATION CONTENT LISTS, PURSUANT TO OMC 18.778.110, TO ADD THE FOLLOWING APPLICATION SUBMITTAL REQUIREMENTS FOR AN ELIGIBLE WIRELESS COMMUNICATION FACILITY MODIFICATION.

WHEREAS, in 2012 Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012” (the “**Spectrum Act**”) (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter “**Section 6409**”) of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the “**FCC**”) to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC, pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (*In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above described proceeding (the “**Report and Order**” or “**Order**”) clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the City Council adopted Ordinance No. _____ creating Chapter 18.46 of the Olympia Municipal Code (OMC) to implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, OMC 18.46 states the City of Olympia Department of Community Planning and Development shall prepare an application form to require the information necessary for the Department to consider whether an application is subject to Chapter 18.46; and

WHEREAS, Chapter 18.77 OMC includes lists of application requirements that specify the content necessary for timely and orderly processing of each project permit application of the city of Olympia and

for reaching a determination that such application is complete as provided by Section 18.72.060 of the Olympia Municipal Code.

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE:

Olympia Application Content List. The City of Olympia Project Permit Application Content Lists, pursuant to OMC 18.77.110, is hereby amended to add the following application submittal requirements for an Eligible Wireless Communication Facility Modification Applications.

A. Application Content Lists. City of Olympia Project Permit Application Content Lists is amended to include:

1. The following contact information for the Authorized Person:
 - a. Name;
 - b. Title;
 - c. Mailing Address;
 - d. Phone Number; and
 - f. Electronic Mail Address (Optional).
2. The legal and dba names, mailing address, Washington tax number, and contact phone number(s) of Applicant.
3. If a corporation, the name and address of the registered agent of Applicant in the Washington State, and the state of incorporation of Applicant.
4. If Applicant is an entity, other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
5. An assertion that the proposed eligible facilities modification is subject to review under Section 6409 of the Spectrum Act.
6. If the applicant is not the owner or person in control of the eligible support structure and/or site, the following shall be required:

An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed eligible facilities modification. If the site is leased from a property owner, the applicant must include a copy of the lease. If the eligible support structure is located in a public right of way, the applicant must also attest that applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right of way.

7. If the applicant proposes an eligible facilities modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required:

Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.

8. If the applicant proposes an eligible facilities modification that will result in an increase in height of the eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the City or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater.

9. If the applicant proposes an eligible facilities modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the City Code, an ordinance or a municipal code of another local government authority, or a state or federal agency, the following shall be required:

A copy of the document (e.g., *conditional use permit*) setting forth such pre-existing restrictions or requirements together with a certification that the proposed eligible facilities modification conforms to such restrictions or requirements; provided that, such certification shall have no application to the extent the proposed eligible facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure.

10. If the applicant proposes an eligible facilities modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required:

Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a drawing or visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

11. If the applicant proposes an eligible facilities modification that will protrude from the edge of a non-tower eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

12. If the applicant proposes a structural modification to an eligible support structure, the following shall be required:

A technical report by a qualified engineer accredited by the state of Washington, demonstrating that the eligible support structure with the proposed modifications will comply with applicable structural, electrical and safety codes. The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

13. If the applicant proposes a modification requiring excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required:

A detailed site plan and drawings, showing (a) the location, elevation and dimensions of the existing eligible support structure, (b) the location, elevation and dimensions of the existing transmission equipment, (c) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment, (d) the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each, (e) any proposed modification to the eligible support structure, (f) the location of existing structures on the site, including fencing, screening, trees, and other significant site features, and (g) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

14. Copies of any previous environmental documents prepared for the site.

15. A signed statement from a qualified person, together with his/her qualifications, that provides expected radio frequency emissions levels from the antenna array(s), and certifies that these emissions comply with FCC standards not only at ground level below the WCF, but also wherever terrain or placement of buildings could cause exposure. The statement shall also certify that both individually and cumulatively, and with any other existing facilities located on or immediately adjacent to the proposed facility, that the proposal complies with FCC standards.

16. If the applicant proposes a modification subject to FAA regulation, a copy of all material submitted by the applicant to the FAA and any such approval if available.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY