



Planning Commission

PUBLIC HEARING on Proposed Amendments to Wireless Communication Facilities (WCF) Regulations

Agenda Date: 9/8/2014
Agenda Item Number:
File Number:14-0857

Type: public hearing **Version:** 1 **Status:** Filed

Title

PUBLIC HEARING on Proposed Amendments to Wireless Communication Facilities (WCF) Regulations

Recommended Action

Public Hearing; no action required.

Report

Issue:

AT&T proposed amendments to Olympia's Antennas and Wireless Communications Facilities ordinance that would:

- Allow as permitted uses (not conditional uses/hearing examiner) concealed wireless facilities on any publically owned property (includes schools, parks and others including within Historic Districts); and
- Variety of updates for consistency with recent changes to Federal and State laws (new time limits and further exemptions from SEPA). [Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012; RCW 43.21C.0384 regarding State Environmental Policy Act (SEPA) exemptions].

Since the WCF ordinance has not been reviewed since adoption in 2006 and significant changes have occurred in the wireless communication industry and in Federal and State laws, staff proposes a more comprehensive amendment for the public hearing as outlined below.

Staff Contact:

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Presenter(s):

Steve Friddle, Principal Planner

Background and Analysis:

On April 21, 2014, the Commission received a briefing on AT&T's proposed amendments to Olympia's WCF ordinance (staff report file No. 14-0395). Since that time the City has contracted for expert legal consultant assistance, worked with AT&T, the Heritage Commission (May 28 and June 25, 2014) and representatives from the Coalition of Neighborhoods. As a result of this effort, staff prepared more detailed amendments (See **Attachment #1**). The purpose of this public hearing staff report is to provide a high level overview summarizing the proposed amendments. In the order that the amendments occur in the attached draft, the proposal now includes:

1. Amending the "**Purpose and Intent**" (OMC 18.44.020) in Section 2 (pages 4 - 5) to incorporate consistency with State and Federal laws (subsection F) and encourage the use of existing WCF locations as a priority over establishing new WCF sites (subsection J).
2. Amending the "**Applicability**" (OMC 18.44.040) to cover the full range of possible WCFs and to help clarify what regulations will apply to Ham (Amateur) radio operated facilities (page 5).
3. Amending the "**Exempt Installations**" (OMC 18.44.060) to clarify that routine maintenance of existing approved WCF includes replacement of antennas and base station equipment provided the number and area remain the same (subsection E on page 6).
4. A significant policy change amending the "**Siting Alternative Hierarchy**" (OMC 18.44.080(A)) shifting the emphasis from city and publically owned sites toward (see pages 6 - 8):
 - a. Modify or collocate on an existing approved WCF
 - b. New concealed attached WCF on existing structures
 - c. Concealed Freestanding WCF
 - d. New right-of-way (ROW) attached WCF on existing utility poles
 - e. New non-concealed attached WCF
 - f. New Non-concealed WCF (mono-pole or lattice tower)
 - g. Critical Areas and Historic Properties and Districts (subject to Heritage Commission recommendation pursuant to the Secretary of the Interior Standards). Then critical areas and historic districts & historic properties using the same hierarchy of a -f above is to be followed.

See also the Olympia Heritage Commission Principals to consider for Wireless Facilities.
(Attachment #2)

5. Further amending **Siting Alternative Hierarchy** (subsections B, C and D; pages 8 - 9) to clarify the hierarchy and that:
- a. The applicant's radio frequency engineer must demonstrate that higher ranked options are not feasible;
 - b. That if a new WCF location is proposed, a conditional use permit is required (Hearing Examiner public hearing review and decision); and
 - c. If a new WCF is proposed in a Critical Area, Historic Properties or District that the applicant's radio engineer must also demonstrate:
 - i. That there is an actual, not just theoretical, significant gap in service. Note that we are addressing both telephone and data networks.
 - ii. That the location will remove the significant gap in a manner consistent with the regulations and Comprehensive Plan as least intrusive upon the surrounding area.
6. Associated policy changes based on 4 and 5 above, by amending the "**Permitted WCF Facilities by Zoning District**" (**OMC 18.44.090**) **Table 44.01** (pages 9 - 10) as follows:
- a. Retitling "Antenna Element Replacement" and elimination of "Collocation/Combined and Expanding Existing Antenna Array" under the Federal Communication Commission (FCC) provisions as a WCF Modification.
 - b. Clarification and code consistency between "Permitted" or "Conditional Use" within specific industrial, residential and commercial zoning districts.
 - c. Allowing WCFs, subject to "Conditional Use Permit" in Critical Area, on Historic Properties or in all Historic Districts (not just National Districts).
7. Amending the "**Development Standards**" (OMC 18.44.100) by adding a section to further clarify the scope of work required by the applicant's radio frequency engineer (new subsection 2 on Page 13) and updating other **miscellaneous** sections (pages 13 -23) to ensure that:
- a. Graffiti maintenance is better defined and addressed;
 - b. Base equipment does not reduce pedestrian walkability or accessibility;
 - c. FCC rules are followed for antenna modifications of up to 10% of the initial approved height and limitation on the size and number standards for ground equipment (pages 18 - 20).
 - d. Ham and Amateur radio operator antennas provisions are spelled out (OMC 18.44.100 (G) - page 23) limiting the height to the district standards and no signage).

8. Amending the “**Permit Review Process**” (OMC 18.44.110 - page 23 of the ordinance) for consistency with the existing ordinance and the amendments described above.
9. **Definitions** (OMC 18.02) are amended in Sections 3 - 10 of the draft ordinance (pages 26 - 32). Although some new definitions are added or amended, all of the WCF related definitions are provided for ease of review and consistency for the Planning Commission. In the final ordinance all definitions will be added to the City Council version.
10. **Application time limits** (OMC 18.72.120(F) are amended in Section 11 (pages 32 - 33) to correct the time limits for Preliminary Plats and Planned Residential Developments back to 120-days and the “Shot Clock” adopted by the Washington State Legislature are proposed as 30-days for a collocation, 90-days for a new WCF not require a Conditional Use Permit
11. The project “**Application Content Lists**” (OMC 18.77.010(H) in Section 12 (page 33-34) will be updated and the reference on the code will need revised.
12. The “**Review and Appeal Authority**” (OMC 18.72.100) in Section 13 (page 34) is updated to reflect the role of the Heritage Commission making recommendations to the Hearing Examiner as part of the Conditional Use Permit for new facilities on Historic properties or within historic districts. It also clarifies that staff makes the decision on antenna modifications. (This section already contains provisions for the Examiner decision on Conditional Use permits (CUP). Also as previously discussed, other code provisions not under consideration allow the Site Plan Review Committee to issue a decision on behalf of the Examiner if nobody requests a public hearing following public notice.)
13. The “**Public Notification**” (OMC 18.78.020) Table 78-1 in Section 14 (page 36-38) is fixed to ensure notice is provided for WCFs not requiring a CUP and updated to reflect the role of the Heritage Commission.
14. The “**Approval and Appeal Authorities**” (OMC 18.72.080) in Section 15 (Page 38) provide that staff make the decision on WCF modifications.

In addition to the draft proposed ordinance (**Attachment #1**), also attached for Commission consideration:

- **Heritage Commission** - Principles to Consider for Wireless Facilities (**Attachment #2**)
- **Coalition of Neighborhoods** - There has been a series of meetings with the intent to achieve early neighborhood/applicant communication and understanding of issues/interests. In keeping with the process outlined in the City/CNA memorandum, the CNA set up two subcommittees that have met with AT&T and staff. The first subcommittee is to discuss specific site proposals and the second is to address the proposed code amendments. AT&T

has met with Olympia's Coalition of Neighborhoods Steering Committee for review and discussion. Attached please find:

- April "Where we've been, where we're at, where we're headed" **Attachment #3**
- "The Elements of a Successful Wireless Facilities Siting Process in Olympia" **Attachment #4**
- The CNA sub-committee has also set up a web-site. The link to the folder is: <https://drive.google.com/folderview?id=0B8dg-fj->

- **Expert Consultant Assistance:** To assist the review, the City contracted with an attorney expert in cell tower siting to advise about current State and Federal regulations, applicable case law, AT&T's proposal and relationship to existing City ordinance. **(See Attachment #5)** Chris Bacha, with Kenyon Disend PLLC, will be attending the Planning Commission's September 22 meeting to answer questions stemming from the public hearing and Commission deliberations.
- **Public Comment** - There are numerous emails addressing project specific siting of potential future WCFs at Roosevelt School and on the Stevens Field Water tank and potential health effects that are on file with the City. **Please note that potential future project specific siting decisions are not within the purview of the Commission, and health effects are within the purview the federal government and not local government.** For the record, the information provided to the Department includes:
 - "Do cell towers cause cancer or other illnesses?"
 - "A very serious situation exists in Bayville N.Y."
 - "Observations of an informed and very concerned mom"
 - "Expel Cell Towers - Testimony before US Congress - Sept 2008"
 - "Governments & organizations that ban or warn against wireless technology"
 - "RF Check - What are the dangers of living near cell phone towers?"
 - Survey study of people living in the vicinity of cellular base stations
 - "What to do if a cell tower is proposed in your neighborhood?"
 - "Biological effects from exposure to electromagnetic radiation emitted by cell tower base stations and other antenna arrays"
 - "Local matter or federal case? The network of cell tower regulation in California"
 - Matt Kennelly proposal to further amend Table 44-01 to prohibit WCFs within 1,000 feet of schools (See **Attachment 6** Power Point)
- Other resources include:
 - www.msrg.org/subjects <<http://www.msrg.org/subjects>>
 - The April 21, 2014 Commission briefing staff report on AT&T's proposed amendments to Olympia's WCF ordinance (staff report file No. 14-0395).

Neighborhood/Community Interests (if known):

The purpose of the public hearing is to identify neighborhood and community interests. Some of the interests expressed in the correspondence and at meetings centers on potential medical effects and public health. The federal government is the authority on such concerns and the City is specifically pre-empted from such considerations.

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Options:

Public Hearing; no action required.

Financial Impact:

None