



Planning Commission

Recommendation to City Council re: Wireless Communications Facility Regulations

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Title

Recommendation to City Council re: Wireless Communications Facility Regulations

Recommended Action

Consider the public hearing testimony, public comments and staff recommendation and formulate a recommendation to the City Council on the draft code amendments related to Wireless Communication facilities ordinances.

Report

Issue:

AT&T proposed amendments to Olympia's Antennas and Wireless Communications Facilities ordinance that would allow as permitted uses concealed wireless facilities on any publically owned property (includes schools, parks and others including within Historic Districts); and other amendments for consistency with recent changes to Federal and State law [Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012; RCW 43.21C.0384 regarding State Environmental Policy Act (SEPA) exemptions].

Staff worked with the AT&T, the Heritage Commission and Coalition of Neighborhood Subcommittees and prepared a more comprehensive amendment proposal that was the subject of a September 8, 2014 Olympia Planning Commission public hearing. The Commission left the public record open to midnight Monday, September 15, 2014 and agreed that Commission questions would be provided to staff. The staff report is finalized at noon on September 15, 2014 for issuance to the Commission. At the time of this report, no additional public comment or Commissioner questions have been received by staff.

Staff Contact:

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Presenter(s):

Steve Friddle, Principal Planner
Chris Bacha, Kenyon Disend PLLC

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) then conducted a public hearing on revised proposed amendments to the WCF ordinance on September 8, 2014.

The City has also contracted for expert legal consultant assistance, worked with AT&T, meet with the Heritage Commission (May 28 and June 25, 2014) and representatives from the Coalition of Neighborhoods. As a result of this effort, staff prepared revised detailed amendments (See **Attachment #1**).

The September 8, 2014 staff report (14-0857) provided an overview summarizing the proposed amendments and the staff presentation focused on key policy changes. This staff report addresses the key issues raised at the hearing in the order they occur in the draft ordinance:

Everyone who testified (Kristen Larson & Ken Lyons with AT&T, Matt Kennelly, Holly Davies and Wendy Doray) discussed amending the "**Siting Alternative Hierarchy**" (OMC 18.44.080(A)) which shifts emphasis from city and publically owned sites to a revised hierarchy (see pages 6 - 8). There was no objection to making it a priority and easier to modify and co-locate on existing WCF facilities as envisioned in 6409. AT&T stated they would submit additional alternative language. Ms. Davies, Chair of the Heritage Commission, clarified the "Principles," (**Attachment #2**) that led to the Commissions position on the proposed amendment indicating that hidden on a historic property maybe the least visually impactful to the property or in historic districts. Mr. Kennelly and Ms. Doray encouraged incorporation of "precautionary principles" into the amendments discussed below. Ms. Doray also testified that WCF's are unnatural interruptions to visual aesthetics and that WCF's should be limited to the least visual.

Staff asked the Commission to consider amendments to the **Siting Alternative Hierarchy** (subsections B, C and D; pages 8 - 9). Specifically, one key issue in the staff recommendation for siting within a Critical Area, on a historic property or in a historic district is that the applicant's radio engineer demonstrate, to the satisfaction of the Hearing Examiner, on a case-by-case (site-by-site) basis that: 1) higher ranked options are not feasible; 2) that there is an actual, not just theoretical, significant gap in service; and 3) 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. AT&T stated they would submit additional alternative language.

Recommending a "precautionary principle," Mr. Kennelly recommended adding one additional grouping to the "**Permitted WCF Facilities by Zoning District**" (OMC 18.44.090) **Table 44.01** (pages 9 - 10) to prohibit WCF's within 1,000 lineal feet of school facilities (See **Attachment 6**).

Ms. Davies questioned whether a provision be added to clarify that when a WCF is proposed within historic districts, that the Commissions review of "contributing properties be the same as "registered" properties. Upon further staff analysis, it was determined that under the current proposed amendment, all properties (registered, contributing and all others within the district) would be reviewed pursuant to the "Secretary of the Interior's Standards for Rehabilitation." The issue of contributing properties will also come before the Commission as part of the Heritage Commission work program in the future.

In addition to several minor formatting or grammatical improvements, there are three substantive correcting amendments staff is proposing based upon Heritage Commission recommendations. First, the addition of "for Rehabilitation" correcting the formal title as "Secretary of the Interior's Standards

for Rehabilitation” on page 8. Second, reformatting the above statement to clarify that the Secretary of Interior Standards for Rehabilitation apply to “a” through “f” of sub-section 7 on page 8, not just “f”. And finally, two changes on Table 44.01 (page 11) under the amended heading “NATIONAL HISTORIC DISTRICTS AND LOCAL, STATE, OR FEDERAL REGISTERED PROPERTIES as follows:

- Groups 1-3 will be revised to read Groups 1 - 2
- Group 4 will be revised to read Groups 3 - 4
- The two “N’s” (not permitted) located under the “NEW NON-CONCEALED - Attached WCF and freestanding” WCF columns for Group 1 - 2 will be changed to “C” (Conditional Use)

Commissioner Horn inquired about amending the **Application time limits** (OMC 18.72.120(F) for preliminary plats and Planned Residential Developments in Section 11 (pages 32). Upon further review, staff will withdraw this amendment and add it back to a future work program.

Neighborhood/Community Interests (if known):

The public hearing identified neighborhood and community interests including “the precautionary principle” as it relates to potential health concerns. The federal government is the authority on such concerns and the City is specifically pre-empted from such considerations. The public record was held open until midnight, Monday, September 15, 2014.

Options:

1. Formulate a recommendation to the City Council in support of the prosed amendment as drafted;
2. Provide staff direction on alternative amendments for recommendation to the City Council;
3. Formulate recommendations to the City Council in opposition to the proposed amendments