



Planning Commission

Wireless Communication Facilities Code Amendment - PUBLIC HEARING

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Title

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Recommended Action

Public Hearing; no action required.

Report

Issue:

AT&T proposed amendments to Olympia's Antennas and Wireless Communications Facilities ordinance (CPD File #14-0008) that would:

- Allow as permitted uses (as opposed to conditional uses considered by the 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 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, a.k.a "Spectrum Act"; RCW 43.21C.0384 regarding State Environmental Policy Act (SEPA) exemptions].

Staff proposed a more comprehensive amendment to the WCF ordinance, on which the Olympia Planning Commission held a public hearing September 8, 2014. The Federal Communications Commission (FCC) issued a Report and Order on October 21, 2014, adopting rules implementing the federal Spectrum Act. After extensive additional legal review of the FCC rules, and review of other cities' ordinances responding to those rules, staff now recommends a more limited ordinance (**Attachment #1**) and resolution (**Attachment #2**). The ordinance creates a separate chapter in the Olympia Municipal Code to specifically address requirements of the changes to federal and state laws. The resolution creates the permit application requirements to implement the ordinance.

Staff Contact:

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Presenter(s):

Leonard Bauer, Deputy Director

Background and Analysis:

A brief history of WCF regulation in Olympia since 2005 is described below.

Background and Summary of Proposed Ordinance and Resolution

On January 23, 2014, AT&T proposed amendments to Olympia's Antennas and Wireless Communications Facilities ordinance (CPD File #14-0008). The Planning Commission received a briefing on those proposed amendments on April 21, 2014 (staff report file No. 14-0395). Following that briefing, the City 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, comprehensive amendments to Olympia's WCF ordinance. The Commission held a public hearing on that staff-proposed ordinance on September 8, 2014 (staff report file no. 14-0857).

The FCC issued a Report and Order on October 21, 2014, adopting rules implementing the federal Spectrum Act, and released an Errata to the Report and Order on January 5, 2015. Based on the public hearing comments, the FCC rules, extensive additional legal review, and review of other cities' ordinances responding to those rules, staff now recommends a more limited ordinance (**Attachment #1**) and an accompanying resolution (**Attachment #2**). The attached ordinance would create a new chapter 18.46 in the Olympia Municipal Code to specifically address requirements of the changes to federal and state laws. The existing WCF ordinance (OMC Chapter 18.44) would continue to apply to any applications for new WCF facilities, and to applications for substantial modifications to existing WCF facilities that are not subject to the new ordinance. The attached resolution creates permit application requirements for WCF modifications applied for under the new ordinance.

The proposed ordinance would:

- 1) Create a separate review process for permit applications for modifications to existing WCF facilities that are subject to the federal Spectrum Act and FCC rules. These types of modifications must not be a substantial change to the physical dimensions of that facility, and involve:
 - Co-location of new transmission equipment,
 - Removal of transmission equipment, or
 - Replacement of transmission equipment.

"Substantial change" is specifically defined in the ordinance under the proposed new Section 18.46.040.

- 2) Create a review process for eligible WCF modification applications that must be completed within 60 days, in accordance with the FCC rules.
- 3) Exempt eligible WCF modification applications from SEPA review under RCW 43.21C.030(2)

(c), to comply with state law.

- 4) Amend the existing Olympia WCF code (Chapter 18.44 OMC) only to add cross-references and a note in OMC 18.44.090 to state that all eligible WCF modifications subject to the new ordinance are permitted uses.

The Municipal Research and Service Center provides extensive additional information on regulation of WCFs (**See link in Attachment #3**).

A Brief History of WCF Regulation in Olympia

1. ***Moratorium:*** In June 2005, in response to neighborhood concerns over siting a new WCF at 1501 Capitol Way, adjacent to the Historic South Capitol Neighborhood, along with numerous other new WCF's being proposed throughout Olympia, the City Council instituted a moratorium on new WCFs that lasted to March, 2006. The moratorium was instituted because the Council "became concerned that economic recovery, the consolidation of telecommunications companies, and the availability of new technology had led telecommunications companies to prepare for a new round of facility construction, and those facilities had the potential to adversely impact the City of Olympia under the City's obsolete zoning and telecommunications regulations."
2. ***Master Plan and Ordinance Overhaul:*** In drafting the City's 2006 ordinance, with the assistance of a group of neighborhood leaders, the City hired a consultant to craft a new ordinance and to draft a Wireless Telecommunications Master Plan for Olympia. The Master Plan supports the goals of the ordinance by providing the data, the maps, and a set of strategies to "reduce tower infrastructure by improving efforts to morph wireless deployments from various service providers, thereby minimizing tower proliferation by increasing shared sites."

The Master Plan acknowledges that it addresses then current 1G and 2G technologies and that 3G and other future technologies may require additional wireless facility locations to meet coverage and network capacity objectives.

The drafting of the City's 2006 ordinance was spearheaded by a group of neighborhood leaders. Olympia overhauled its telecommunications ordinance in 2006 to create a more comprehensive method to review, evaluate and permit sites for constructing and co-locating new WCFs.

3. ***Current Status*** - The existing 2006 Antennas and Wireless Communication Facilities (AWCF) ordinance continues to be in force. In the past couple of years, the growing demand for wireless services has been met by siting new or upgrading antennas on existing facilities. There has been only one new tower associated with CAPCOM 9-1-1 Service along Pacific Avenue.
4. ***Increasing Service Requirements*** . With the industry shift away from landlines to cell phones, and with the dramatic increase in the use of a variety of wireless systems to transmit enormous amounts of data, wireless carriers are now looking to meet the growing demand for service by siting more facilities in residential neighborhoods to address coverage and capacity. The current code generally favors city owned water tower facilities in siting. City revenue from leases for WCFs provided the Olympia Water Utility approximately \$260,000.00 in 2013. This revenue helps

keep water utility rates lower.

5. *Regulatory Framework .*

Federal, State and local government each have a role in regulating WCF's. Over the years, addressing the impacts has shifted from local control and permitting toward more exemptions from the State Environmental Policy Act (SEPA) and more federal control. For example, prior to 2006, the Federal government established and regulated associated health standards related to WCF's and local government is barred from addressing health concerns. Since 2006, federal and state government continues to enact laws that generally make it easier to site new facilities to expand their coverage and capacity. Examples of recent changes to federal and WA State law have been to shorten the time allowed for local government to review permits and revise definitions that expand the ability to site or upgrade WCF on existing structures.

Neighborhood/Community Interests (if known):

The Planning Commission and staff previously received 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. These communications are detailed in the April 21, 2014, Planning Commission staff report (File No. 14-0395). ***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.***

The Planning Commission also received testimony at its September 8, 2014, public hearing, which are described in the minutes of that meeting.

Options:

Public Hearing; no action required.

The Planning Commission has the option to extend the time period for receiving public comment. Staff recommends that, if the Commission desires to extend the written comment period, it be extended through ***5:00 p.m., November 30, 2015.***

Financial Impact:

Costs of staff time to implement the proposed ordinance are included within the existing City budget.