



## Planning Commission

### Wireless Communication Facilities Code Amendment - Recommendation

**Agenda Date:** 12/7/2015  
**Agenda Item Number:**  
**File Number:** 15-1199

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#### **Title**

Wireless Communication Facilities Code Amendment - Recommendation

#### **Staff Recommended Action**

Recommend that City Council adopt attached Wireless Communication Facilities Ordinance and Resolution

#### **Report**

##### **Issue:**

On January 23, 2014, AT&T proposed amendments to Olympia's Antennas and Wireless Communications Facilities ordinance (CPD File #14-0008). Staff proposed a more comprehensive amendment to the WCF ordinance, on which the Olympia Planning Commission held a public hearing September 8, 2014 (staff report file #14-0857). 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 recommended a more limited ordinance and resolution.

The Planning Commission held a public hearing on a wireless communications ordinance and resolution on November 16, 2015 (staff report file #15-1081). 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 recommends the attached ordinance and resolution, which include edits based on public testimony received at the hearing.

#### **Staff Contact:**

Leonard Bauer, Deputy Director, Community Planning and Development (CPD), 360.753.8206

#### **Presenter(s):**

Leonard Bauer, Deputy Director

#### **Background and Analysis:**

A brief history of WCF regulation in Olympia since 2005 is described in the November 16, 2015 staff report received by the Commission.

### **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). AT&T's proposed amendments would:

- Allow as permitted uses (as opposed to conditional uses considered by the hearing examiner) concealed wireless facilities on any publicly 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].

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 - staff report file #14-0539 and June 25, 2014 - staff report file #14-0634) 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 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 recommended a more limited ordinance and an accompanying resolution. The 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 resolution would create permit application requirements for WCF modifications applied for under the new ordinance.

The Planning Commission held a public hearing on the staff-recommended ordinance and resolution on November 16, 2015, and held open the written comment period until November 30. Testimony was received from AT&T representatives generally supporting the approach in the proposed ordinance and resolution, but recommended some edits for clarity and greater consistency with the FCC rules. No other testimony was received.

After review of the testimony, staff now recommends the attached ordinance and resolution, which propose several revisions to the public hearing draft based on the testimony received.

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.

Additional background information on regulation of WCFs was provided in the Commission’s November 16, 2015 staff report.

**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 (staff report file #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, and November 16, 2015, public hearings, which are described in the minutes of those meetings.

**Options:**

1. Recommend adoption of the attached ordinance and resolution.
2. Recommend adoption of the November 16, 2015, public hearing draft of the ordinance and resolution.
3. Recommend adoption of an ordinance and resolution with additional revisions as determined by the Commission.
4. Do not recommend adoption of amendments to the Olympia Municipal Code addressing wireless communication facilities. (Please note that this option may not fully address federal and state legislation or FCC rules.)

**Financial Impact:**

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