



City Council

Approval of Ordinance Amending Wireless Communication Facilities Code (OMC 18.44 and 18.46) and Resolution Amending Application Content Lists (OMC 18.77)

Agenda Date: 2/9/2016
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Title

Approval of Ordinance Amending Wireless Communication Facilities Code (OMC 18.44 and 18.46) and Resolution Amending Application Content Lists (OMC 18.77)

Recommended Action

Committee Recommendation:

The Planning Commission unanimously recommends adoption of the attached Wireless Communication Facilities Ordinance and Resolution

City Manager Recommendation:

Move to approve the wireless communication facilities ordinance on second reading.

Report

Issue:

Should the Council adopt the attached Wireless Communication Facilities (WCF) Ordinance and Resolution, amending the City's code provisions for review of proposed modifications to existing WCF's? [Note: WCF's are typically antennas or groups of antennas attached to a support structure, such as a building, water tower, or a free-standing cell tower.]

The ordinance creates a separate chapter OMC 18.46 in the Olympia Municipal Code to specifically address requirements of changes to federal and state laws. The resolution creates the permit application requirements to implement the ordinance.

Staff Contact:

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

Presenter(s):

None. Consent calendar item.

Background and Analysis:

Background and analysis have not changed from first to second reading.

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

Recent Changes to Federal and State Telecommunications Laws

The attached WCF Ordinance and Resolution would amend the city code to comply with several recent changes in federal and state laws.

In 2012, Congress adopted the Middle Class Tax Relief and Job Creation Act (a.k.a “the Spectrum Act”). Section 6409 of the Spectrum Act significantly limits local government permitting authority over proposed modifications to existing WCFs, if they do not result in a substantial change to the physical dimensions of that facility. In 2014-15, the Federal Communication Commission (FCC) adopted rules implementing Section 6409 of the Spectrum Act, which define a substantial change to a WCF (among other terms), and limit local government review of a proposed WCF modification to 60 days.

Legislative amendments in 2013 to the State Environmental Policy Act (SEPA) expanded exemptions from SEPA for certain WCF modifications.

History 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 proposed amendments to address changes in the Spectrum Act and SEPA, and also proposed changes to expand the number of WCF’s that would be permitted uses (as opposed to conditional uses considered by the hearing examiner) and the ability to site concealed wireless facilities on any publicly owned property (includes schools, parks and others including within Historic Districts).

The Planning Commission received a briefing on those proposed amendments on April 21, 2014. Following that briefing, the City contracted for expert legal assistance. draft more detailed, comprehensive amendments to Olympia’s existing WCF code (OMC 18.44). The Commission held a public hearing on that staff-proposed ordinance on September 8, 2014.

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. During this process, staff continued to work with AT&T, the Heritage Commission and representatives from the Coalition of Neighborhood Associations.

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. At its December 7, 2015, meeting, the Planning Commission accepted several minor amendments and voted unanimously to recommend adoption of the attached ordinance and resolution.

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

Summary of Proposed Ordinance and Resolution

The attached ordinance would create a new chapter 18.46 in the Olympia Municipal Code to specifically address the new requirements of the Spectrum Act. This chapter would apply **only** to proposed WCF modifications that are **not** substantial changes as defined in the Spectrum Act and FCC rules. The resolution would create permit application requirements for WCF modifications applied for under the new OMC chapter 18.46.

The existing WCF ordinance (OMC Chapter 18.44) would continue to apply to any applications for **new** WCF facilities, and to applications for substantial changes to existing WCF facilities that are not subject to the new ordinance.

More specifically, 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, consistent with the FCC rules.

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.

Neighborhood/Community Interests (if known):

There has been substantial public interest in the regulation of WCFs in the community. 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). 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.

The Coalition of Neighborhood Associations formed a subcommittee to work on WCF issues. Staff coordinated regularly with this CNA subcommittee throughout this process, and presented the

proposed ordinance and resolution to the CNA Steering Committee, receiving consensus support.

Please note that consideration of health effects of WCFs are within the purview the federal government and not local government.

Options:

1. Adopt the attached ordinance.
2. Adopt the ordinance with additional revisions as determined by the Council.
3. Do not adopt 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.