



## MEMORANDUM

**TO:** Judi Roland, Chair, Planning Commission  
Roger Lee, Vice-Chair, Planning Commission  
Planning Commission Members

**FROM:** Jeff Dixon, Planning Services, Department of Community Development

**DATE:** September 28, 2020

**RE:** Introductory Discussion on Proposed Code Amendments related to Wireless  
Telecommunications Regulations, ZOA20-0005

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### **General introduction**

"Wireless" is a broad term that encompasses many different types of technologies and devices that transmit data over the air rather than over wires, including cellular communications. Most wireless communication facilities/tools are either located in public rights-of-way (ROW) or located outside of ROW on private or public property.

Those wireless communication facilities located in the public ROW are subject to local government oversight by exercising their authority to regulate the public ROW through franchises, master permits, and right-of-way use agreements that authorize utilities and other business entities to use the ROW under contractual obligation and subject to local ROW permitting requirements. Administration and enforcement of these requirements is generally the responsibility of the City's Public Works Department.

Those facilities located outside of the ROW and on private or public property, are regulated as a land use and are subject to local zoning and building code regulations, as a private utility. However, since the facilities most often include tall towers and are the subject of specific federal authority, they are not treated the same as other private utilities and substations and are usually given unique treatment by separate categorization in the zoning regulations. Administration and enforcement of these requirements is generally the responsibility of the City's Community Development Department.

### **Purpose of code changes**

The City is systematically initiating changes to various city code sections to address consistency with changes in federal law requirements and to reflect changes in wireless communication technology among other changes. Due to the highly technical and litigious nature of the subject, the City hired a legal consultant specializing in the subjects of wireless communication and ROW permitting of franchises and that is familiar with the results of court decisions. City

Legal Dept., Public Works Dept., and Community Development Dept. staff has been working with this consultant over the last year on drafting code changes.

Based on this code drafting, the City is simultaneously proposing to amend code sections affecting public right-of-way franchises, and right-of-way use permits among others and these changes are not the subject of Planning Commission consideration since they primarily address the subject of city rights-of-way. However, the city is proposing to amend city code section, Title 17 'Land Adjustment and Divisions' (the subdivision code) and Title 18 'Zoning' which are subject to review and recommendation by the Planning Commission.

For context for the Planning Commissioners, what follows is a list of the seven city code titles that are proposed to be changed simultaneously. It is necessary to change these simultaneously since there are cross references to definitions that are found in a different portion of the code. These cross references avoid duplication and aid future internal consistency of terms and facilities that are common to ROW and non-ROW locations. A listing of the Code Titles to be changed and a brief summary of the proposed changes is provided below:

**Not subject to Planning Commission Review: (copy not provided) -----**

- Title 3, REVENUE AND FINANCE
  - Chapter 3.42, Cable Television Utility Tax
  - Chapter 3.84, Telephone Business
  - Chapter 3.88, Utility Services

*The key changes to Title 3, are:*

- *Align definitions with those of Title 20 for utilities, telecommunications and cable.*
- *Modernize procedural provisions to reflect actual process.*
- *Repeal of ACC 3.84.110 as annexation notification is addressed by applicable state law.*
- *Repeal of ACC 3.88.030 as the provision is outdated and duplicative of requirements in Title 5.*

- Title 5, BUSINESS LICENSES AND REGULATIONS
  - Chapter 5.84, Licensing of Telecommunications Carriers, Operators, Providers, and Other Utilities

*The key changes to Title 5, are:*

- *Remove purpose statement of business licensing as it is duplicative.*
- *Align definitions with those of Title 20 for utilities, telecommunications and cable.*
- *Modernize procedural provisions to reflect actual process.*

- Title 12, STREETS, SIDEWALKS AND PUBLIC WORKS
  - Chapter 12.24, Construction Permits
  - Chapter 12.32, Sidewalk Obstructions

*The key changes to Title 12, are:*

- *Modernize procedural provisions to reflect actual process.*
- *Ensure that any construction work performed under this title is done per the City's Engineering Design and Construction Standards.*

- Title 13, WATER, SEWERS AND PUBLIC UTILITIES

- Chapter 13.32A, Underground Wiring
- Chapter 13.36, CATV Systems **(Repealed)**
- Chapter 13.44, Electrical Franchise **(Repealed)**

*The key changes to Title 13, are:*

- *Align definitions with those of Title 20 for utilities, telecommunications and cable.*
- *Modernize procedural provisions to reflect actual process.*
- *Ensure that any construction work performed under this title is done per the City's Engineering Design and Construction Standards.*
- *Update requirements, exemptions and process for undergrounding of utilities, telecommunications and cable.*
- *Repeal of Chapter 13.36 ACC as the provisions are being moved to Title 20 and updated to reflect current federal requirements.*
- *Repeal of Chapter 13.44 ACC as the provisions are outdated and addressed under the provisions of Title 20.*

- Title 20, FRANCHISES, CABLE FRANCHISES, AND LEASES

- Chapter 20.02, General Provisions
- Chapter 20.04, Utility and Telecommunications Franchises
- Chapter 20.06, Cable Franchise
- Chapter 20.08, Facilities Lease
- Chapter 20.10, Conditions of Public Way Agreements, Franchises and Facilities Leases **(Repealed)**
- Chapter 20.12, Open Video Systems **(Repealed)**
- Chapter 20.14, Small Wireless Facilities

*The key changes to Title 20, are:*

- *Align definitions throughout the titles for utilities, telecommunications and cable.*
- *Update City Code in conformance with current federal and state requirements for utilities, telecommunications and cable in the public ways and on city owned facilities and property.*
- *Modernize procedural provisions to reflect actual process.*
- *Repeal of Chapter 20.10 ACC as the provisions of this chapter have been updated and moved to Chapter 20.02 ACC.*
- *Repeal of Chapter 20.12 ACC as this chapter was empty.*

**Subject to Planning Commission Review and Recommendation: (copy provided, see attachments)**

- Title 17, LAND ADJUSTMENTS AND DIVISIONS
  - Chapter 17.14, IMPROVEMENT REQUIREMENTS – SUBDIVISIONS
  - Chapter 17.28, Infrastructure Conduit **(Repealed)**

*The key changes to Title 17, are:*

- *Minor changes to improve clarity and correct references.*
- *Repeal of ACC 17.28 because addressed in ACC 13.32A.*

- Title 18, ZONING
  - Chapter 18.02, General Provisions
  - Chapter 18.04, Definitions
  - Chapter 18.07, Residential Zones
  - Chapter 18.23, Commercial and Industrial Zones
  - Chapter 18.31, Supplemental Development Standards
  - Chapter 18.35, Special Purpose Zones

*The key changes to Title 18, are:*

- *Changes to be consistent with the requirements of federal legislation that provide the city must approve additions or modifications to existing wireless communication facilities that do not exceed a "substantial increase" and that the city must approve within a specified timeframe. This requires new terminology, procedures, and regulations.*
- *Also changes were made to accommodate the new technology of "small cell wireless communication" facilities when located on private property.*
- *Other minor housekeeping or administrative changes were also made.*

The proposed changes are shown by ~~strikeout~~ (deletions) and underline (additions) in the code attached to this memo.

The following sections summarize the effect of federal regulations and the key points affecting City Titles 17 and 18.

### **Wireless Antenna Facilities**

With the evolving technology and increased usage of wireless devices by the population, wireless antenna facilities have been given special consideration by federal regulations. Local jurisdictions across the country need to ensure that their regulations regarding wireless antenna facility siting are consistent with section 6409(a) of the [Middle Class Tax Relief and Job Creation Act of 2012](#), as set forth in the Federal Communications Commission's (FCC's) October 2014 Acceleration of Broadband Deployment Order.

## **Regulating Wireless Antenna Facilities**

Local governments can develop ordinances and policies to provide opportunities for wireless communication facilities (WCF) consistent with the statutory rights of wireless communication service providers provided by the federal regulations while also providing for an orderly development of the city and protecting the health, safety, and general welfare of the city's residents and property owners. A primary objective of these ordinances is to preserve the existing visual and aesthetic character of the jurisdiction and its neighborhoods, and minimize incompatibility, as well as minimizing the noise impacts generated by these facilities.

The City has regulated WCFs located on public and private property by zoning regulations since Ordinance No. 6245 in 2009. Most recently the Planning Commission reviewed changes to these regulations in April 2019 as a result of the need to address construction of a unique category of wireless communication by Puget Sound Emergency Radio Network (PSERN) for an emergency response communications facility. These changes were adopted by Ordinance No. 6716 in 2019.

## **Small Cell Communication Technology**

In recent years, the dramatic increase in use of wireless devices has triggered the need for new subcategory of wireless communication facility referred to as "small cell" technology to increase signal coverage. (The term: "small wireless facility" is used in the proposed city code changes.) The signal coverage is increased by use of smaller antennas (less than 3 cubic feet), not mounted as high, and more closely-spaced. A typical small cell is between 25-45 feet in height, attaches to existing utility poles or light/traffic pole within the right-of-way, and requires an aerial or underground line to access power and fiber in order to transmit cellular phone and data signals. Small cell facilities may also be installed on public or private property outside of the right-of-way and thus are also addressed in zoning code changes.

As a result of the increased demand for this technology, there has been a substantial increase in applications from providers seeking to place small cell facilities in municipal rights-of-way. In 2018, the Federal Communications Commission (FCC) issued a 2-part Declaratory Ruling with the intent to streamline the deployment of Fourth Generation (4G) and Fifth Generation (5G) mobile communication system infrastructure.

## **Regulating Small Cell Technology**

To meet rapidly increasing demand for wireless services and encourage investment in a national infrastructure for 5G, wireless communication providers must deploy infrastructure at significantly more locations using new, small cell facilities. This *Declaratory Ruling and Third Report and Order* is part of a national strategy to promote the timely buildout of this new infrastructure across the country by eliminating regulatory impediments, unnecessarily add delays and costs to bringing advanced wireless services to the public. The ruling was effective January 14, 2019.

## **Some key provisions of the federal legislation:**

- Clarify that federal regulations apply to support structures and to transmission equipment used in connection with any Commission-licensed or authorized wireless transmission.

- Define "transmission equipment" to encompass antennas and other equipment associated with and necessary to their operation, including power supply cables and backup power equipment.
- Define "tower" to include any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities.
- Clarify that the term "base station" includes structures other than towers that support or house an antenna, transceiver, or other associated equipment that constitutes part of a "base station" at the time the relevant application is filed with municipal authorities, even if the structure was not built for the sole or primary purpose of providing such support, but does not include structures that do not at that time support or house base station components.
- Clarify that a modification "substantially changes" the physical dimensions of a tower or base station, as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the federal legislation, if it meets a defined set of criteria:
  - It increases the height of the tower by more than ten percent or by more than twenty feet, whichever is greater;
  - It involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater;
  - For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
  - It entails any excavation or deployment outside the current site/lease area, as defined;
  - It would defeat the concealment elements of the eligible support structure; and
  - It does not comply with original approval conditions unrelated to a "substantial change".

And thus is determined to be an "eligible facilities request" under the federal legislation.

- Provide that localities may continue to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.
- Provide the following guidance for reviewing an application under federal legislation:
  - A local government may only require applicants to provide documentation that is reasonably related to determining whether the "eligible facilities request" meets the requirements;

- Within 60 days from the date of filing, accounting for tolling, a local government shall approve an application meeting the “eligible facilities request”;
  - The running of the period may be tolled by mutual agreement or upon notice that an application is incomplete provided in accordance with the same deadlines, but not by a moratorium; and
  - An application meeting the “eligible facilities request”; is deemed granted if a State or local government fails to act on it within the requisite time period.
- Clarify that federal legislation applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities.
  - Provide that parties may bring disputes-including disputes related to application denials and deemed grants-in any court of competent jurisdiction.
  - Establish new “presumptively reasonable” permit review timelines (referred to as shot clocks) applicable to small cell facilities.
  - Clarify the use of the term “collocation” in relation to small cell facilities.
  - Publishes fee limitation for the use of city-owned infrastructure (such as light and signal poles).
  - Establish guidelines for imposing aesthetic standards that must be: reasonable, no more burdensome than those applied to other types of infrastructure deployments, objective, and published in advance.
  - Interpret the term “effectively prohibit”.

### **Next steps**

If the Planning Commission feels like the changes are ready to proceed, Staff will move forward with scheduling the public hearing for November 4, 2020.

### **Attachments:**

- Title 17, LAND ADJUSTMENTS AND DIVISIONS
  - Chapter 17.14, Improvement Requirement – Subdivisions
  - Chapter 17.28, Infrastructure Conduit **(Repealed)**
- Title 18, ZONING
  - Chapter 18.02, General Provisions
  - Chapter 18.04, Definitions
  - Chapter 18.07, Residential Zones
  - Chapter 18.23, Commercial and Industrial zones
  - Chapter 18.31, Supplemental development standards
  - Chapter 18.35, Special Purpose Zones