

**5a. Staff Report - Wireless Telecommunication Facilities Dev. Code Amend.**

Planning Commission Meeting Date: August 3, 2017

Agenda Item: 5a.

**PLANNING COMMISSION AGENDA ITEM**

CITY OF SHORELINE, WASHINGTON

**AGENDA TITLE:** Public Hearing on Wireless Telecommunication Facilities – Development Code Amendment, Proposed Ordinance No. 782

**DEPARTMENT:** Planning & Community Development

**PRESENTED BY:** Julie Ainsworth-Taylor, Assistant City Attorney

Public Hearing

Discussion

Study Session

Update

Recommendation Only

Other

**BACKGROUND**

Pursuant to SMC 20.30.070, amendments to SMC Title 20, the City's Unified Development Code, are legislative decisions for which the Planning Commission is the reviewing authority and tasked with conducting a public hearing so as to develop a recommendation for submittal to the City Council.

The purpose of this public hearing is to allow for public comment on proposed amendments to Shoreline Municipal Code (SMC) 20.40. These proposed amendments are in response to rules adopted by the Federal Communications Commission (FCC) in 2015.

In 2012, the United States Congress passed the "Middle Class Tax Relief and Jobs Creation Act" ("Spectrum Act") contains provisions that expedite the availability of spectrum for commercial mobile broadband. Section 6409(a) of the Spectrum Act imposes substantive and procedural limitations upon local government authority to regulate modifications of existing wireless antenna support structures and base stations. The FCC subsequently issued implementing regulations in 2015, codified at 47 CFR §1.40001, which became effective in April 2015.

The City's development regulations related to wireless facilities must be amended to bring them into compliance with the mandate imposed by Congress in Section 6409(a) of the Spectrum Act and the FCC regulations contained in 47 CFR §1.40001.


**DISCUSSION**

The Planning Commission was already made aware of the proposed amendments in a study session held on July 6, 2017. See -

Approved By: Project Manager



Planning Director



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<http://www.shorelinewa.gov/Home/Components/Calendar/Event/11564/182?toggle=allpast>

However, since this is a public hearing to allow for public comment, the entirety of that staff report is repeated here with some modifications for further clarification.

The siting of wireless telecommunication facilities is largely regulated by the federal government. In other words, the federal government has preempted many aspects of this type of business. Preemption serves to displace conflicting state law or local ordinances. In other words, while the City generally has broad discretionary in adopting development regulations that it determines best serve the public interest of its citizens, when it comes to wireless telecommunication facilities the federal government has “tied the hands” of the City.

Federal requirements for local processing of applications for wireless facilities derive from two primary pieces of legislation. First, the Telecommunications Act of 1996, while preserving most local zoning authority in the siting of wireless facilities, preempted certain exercises of such authority in order to balance local concerns with a growing need for deployment of new facilities. The 1996 Act maintained local decisions regarding placement, construction, and modification but prohibited actions that would prohibit or have the effect of prohibiting facilities, to take action within a reasonable time, and that were based on the environmental effects of radio frequency emissions so long as emissions were within FCC parameters.

Most recently, Section 6409(a) of the "Middle Class Tax Relief and Jobs Creation Act" ("Spectrum Act"), codified at 47 USC §1455(a), was passed in 2012. The Spectrum Act builds on the prior preemption authorized by the 1996 Act by providing that state and local authorities cannot deny and must approve qualifying requests for modifications to eligible facilities. The intent of the Spectrum Act was to accelerate the speed of the collocation application approval process.

In regards to the Spectrum Act, the FCC was tasked with developing implementing regulations which became effective in April 2015 and are codified at 47 CFR Subpart CC §1.40001. These rules, address “Eligible Facilities Modifications” and provide clarification to terms and phrases used in the Spectrum Act, such as “wireless tower,” “base station,” “modification,” and “substantial change.” The new rules define “substantial change” in relationship to changes in the physical dimension of the tower or base station and the rules provide for specific criteria for such things as height and width modifications.

The FCC rules do allow the City to condition approval on compliances with building and other structural/safety codes along with federal regulations. The FCC rules state that the City may only ask for information reasonable to establish whether the application qualifies under Section 6409(a) and not other types of information, such as justification to support the project’s need.

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The FCC rules also establish timeframes for issuing a decision on an application, commonly referred to as the “shot clock.” Under the FCC rules, the City must act on an application within 60 days of submittal, allowing for tolling of that time, or the application is deemed approved.

To address the FCC rules, the proposed amendment to SMC Chapter 20.40 will create a new section, SMC 20.40.605, expressly addressing Eligible Facilities Modifications under the Spectrum Act and the FCC implementing rules. The new SMC provisions set forth the definitions established by the FCC, establish a review process that conforms to the “shot clock,” ensures application building and safety regulations continue to apply, and sets forth an appeal process for any decision of the City in regard to Eligible Facilities Modification applications.

In addition, two sections SMC 20.40.600, the current Wireless Telecommunication Facilities regulations, are amended to provide clarifications as to the applicable review process for Eligible Facilities Modifications. A new provision is added to SMC 20.40.600(A) Exemptions, denoting that Eligible Facilities Modifications are exempt from review under SMC 20.40.600 and SMC 20.40.600(H) Modification is also amended to denote Eligible Facilities Modifications are not reviewed under SMC 20.50.600.

### **CONCLUSION**

The City’s current wireless facilities regulations do not contain provisions reflecting the Spectrum Act and its implementing rules. The City’s development regulations related to wireless facilities must be amended to bring them into compliance with the mandate imposed by Congress in Section 6409(a) of the Spectrum Act and the FCC implementing regulations.

As provided in SMC 20.30.350, amendments to SMC Title 20 may only be approved if:

1. The amendment is in accordance with the Comprehensive Plan;
2. The amendment will not adversely affect the public health, safety, or general welfare; and
3. The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.

As noted above, the amendment to the SMC Title 20 is mandated by the Federal Government’s passage of the Spectrum Act and the FCC implementing rules. However, the City’s Comprehensive Plan (Utilities Element) does contain three policies related to wireless communication facilities, U-19, U-20, and U-21, which do speak to facilitating access to reliable services throughout the City and managing the placement of these facilities so as to promote efficient service delivery.

In addition, since the FCC rules permit the City to condition Eligible Facilities Modifications on compliance with building, structural, and similar safety regulations,

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these amendments should not have an adverse effect on the public health, safety, or welfare. Lastly, the intent of the Spectrum Act is to satisfy the growing need for wireless communications and, therefore, this amendment is in the best interests of the citizens of Shoreline.

Thus, the proposed amendments satisfy the criteria of SMC 20.30.350.

### **RECOMMENDATION**

Staff recommends that the Planning Commission recommend the proposed amendments for adoption by the City Council.

### **TIMING AND SCHEDULE**

Planning Commission Public Hearing – August 3, 2017  
City Council Study Session – September 11, 2017  
City Council Adoption – September 25, 2017

### **ATTACHMENT**

Attachment A – Ordinance No. 782

Exhibit A to Attachment A - Proposed Amendment to Chapter 20.40, SMC, adding a new section, SMC 20.40.605 Wireless Telecommunication Facilities – Eligible Facilities Modifications and providing minor associated amendments to SMC 20.40.600 for clarification as to the applicable review process.