

CITY COUNCIL REGULAR SESSION

Response to Federal Communications Commission (FCC) Order preempting local authority to regulate small cell deployment.

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EXECUTIVE SUMMARY

Following Council direction on January 7, two items are returning tonight for Council action:

- Ordinance amending Chapter 6.02 of the Bellevue City Code (BCC); adopting a new Chapter 6.08 BCC in response to the FCC Order; and,
- Resolution approving the Master License Agreement (MLA) template and authorizing execution of individual MLAs with qualified applicants administratively.

RECOMMENDATION

The proposed Ordinance amending Chapter 6.02 BCC and adopting a new Chapter 6.08 BCC, and the proposed Resolution approving the MLA template and authorizing execution of individual MLAs to be accomplished administratively, identified by Council on January 7 for final adoption, are each presented for separate Council action on the agenda tonight.

BACKGROUND/ANALYSIS

On January 7, staff provided Council with an overview of the order recently issued by the FCC which became effective on January 14. The FCC Order significantly limits local control of small wireless facilities. In addition to the FCC Order, staff also provided Council with the evolution of wireless technology throughout the City, explaining the need to deploy newer small cell technology in addition to traditional cell tower equipment to meet current demands.

Response to the FCC Order

An interdepartmental team of staff have been collaborating on a response to the FCC Order, and the work of that team was presented to Council on January 7. The staff proposed response has two prongs. The first requires amendments to the Telecommunications title (Title 6) of the BCC. The second requires approval of a Master License Agreement (MLA) template. This proposed two-prong approach is described in greater detail below.

Title 6 Code Amendments: Amendments to Title 6 BCC are necessary to regulate the deployment of small wireless facilities (SWFs) in rights-of-way consistent with the FCC Order. Currently, all telecommunication facilities in the rights-of-way are regulated under the terms of the Telecommunications Code and the Land Use Code (LUC), even though LUC regulations were originally created when wireless facilities were larger, taller, and served much greater geographic areas than the

current small cell deployments. Bellevue Code needs to be updated now to align with the evolution in Federal law.

Two amendments to the City Code are proposed for Council adoption tonight in response to the FCC Order:

1. Chapter 6.02 BCC would be amended to include a new authority section, clarify that SWFs are regulated exclusively under the terms of Title 6, clarify that SWFs are not regulated under the LUC, and expand the definitions section. Amendments to Chapter 6.02 were presented to Council on January 7, and the amendments remain unchanged since Council's prior review. A red-line and strike-out version of the proposed amendments to Chapter 6.02 BCC is provided in Attachment A.
2. A new Chapter 6.08 BCC would be created. This new chapter would provide the regulatory framework necessary for permitting SWFs within federally mandated timeframes (referred to as shot clocks). This new chapter would authorize the Transportation Director to permit all SWF collocations on poles located in the rights-of-way, provide deployment requirements (including design standards), create minimum application requirements, provide for permitting and post installation inspections of SWFs, including certification of compliance with FCC radio frequency (RF) emissions if requested, and include parameters for modification and removal of SWFs.

Following the January 7 Council Study Session discussion of this new chapter, AT&T requested the City to incorporate additional flexibility in the code to address minor deviations needed to accommodate technical constraints. Council directed staff to work with the carriers to respond to the request. Chapter 6.08 has been updated to reflect the results of coordination with the carriers since January 7 to address their request for additional flexibility. A proposed new Chapter 6.08 BCC is provided in Attachment B, and the updated language is identified in red-line and strike-out font to show what has changed since Council's prior review.

Amendments to the Comprehensive Plan and LUC are not necessary at this time because the newly defined SWFs will be regulated exclusively under the terms of the Telecommunications Title. However, additional code amendments have been identified as desirable to foster code clarity, transparency and ease of permit administration. These future code amendments are described below.

1. Telecommunication Title Amendments – Phase 2: Amendments to the Telecommunication Title currently before Council (Phase 1) were drafted to respond to the carriers' highest deployment priorities – co-locations on City poles and utility poles (such as PSE distribution poles). While the Phase 1 amendments will accommodate a majority of the carrier's deployment needs at this time, flexibility to deploy antennas on strands located between utility poles and on purpose-built poles has also been requested. The interdepartmental team that worked on the Phase 1 code amendments plans to continue its coordination efforts with the carriers to develop design standards applicable to strand mounted antennas and purpose-built poles for future Council consideration. This work is proposed to be undertaken before the April 15 deadline for adoption of design standards that is referenced in the FCC Order.

2. **Conformance Amendments:** The policy discussion contained in the Comprehensive Plan and exemptions provided in the LUC should be updated to reflect the new regulatory framework for SWFs. Staff recommends that this work happen as part of the 2019 policy and code development work program.
3. **Small Cell Deployments on City Property and Private Property:** The new Chapter 6.08 of the Telecommunications title facilitates deployment of small cell co-locations on structures located in the right-of-way. Substantive amendments to the LUC would be required to accommodate rapid deployment of small cell facilities on property located outside the right-of-way. Staff plans to scope the necessary amendments to the LUC to facilitate small cell deployments outside the right-of-way and seek Council feedback on whether to pursue these substantive amendments as part of the 2019 policy and code development work program.

In addition to a SWF permit, deployments proposed on City-owned poles would be required to execute a lease under the Telecommunication Facilities Lease provisions of Chapter 6.06 BCC. An MLA template is proposed as the mechanism for the Transportation Director to administer the leasing program for SWFs on City-owned poles in the rights-of-way.

MLA Template: The MLA is an umbrella license to use any City-owned streetlights for the deployment of SWF. The MLA establishes the rules and regulations for attaching to City owned streetlights, including insurance, bonding, indemnification and hold harmless provisions protecting the City from liability resulting from the presence or operation of the SWF on the City property. As carriers identify individual poles they would like to attach to, they must apply for an addendum to the MLA (referred to as a site license addendum or SLA), to be vetted and approved by the Transportation Department. Each SLA would be subject to all the terms and conditions of the MLA. The MLA template was presented to Council on January 7. A copy of the MLA template is provided as Attachment C and remains unchanged since Council's prior review.

All lease agreements for telecommunications facilities must be approved by the City Council (BCC 6.02.040). Staff anticipate several carriers applying for MLAs shortly after Council approval. Rather than bring each MLA to Council separately, Council is being asked to adopt a Resolution to approve the form of the MLA and authorize execution with each carrier administratively without subsequent Council approval.

POLICY & FISCAL IMPACTS

Policy Impact

Bellevue's existing policy and code is based on initial wireless technology that needed to support larger equipment needs. In 2016, Council directed staff to update the code and processes to better match the evolution of wireless communication technology, and the desire to support high functioning and reliable wireless service for residents and businesses consistent with the Bellevue Smart City Strategy. Council also acknowledged the need to balance wireless facilities and their benefits with proliferation and aesthetic concerns, especially in Bellevue neighborhoods. Staff advanced work to meet this direction by beginning a Master License Agreement process to ensure providers had a more straightforward and

predictable process while establishing terms to meet existing size and aesthetic requirements of the LUC.

In September 2018, the FCC's Order required a modified approach that recognized limitations on local ability to regulate size and location of SWF equipment. Specifically, the telecommunications code is proposed to provide the regulations necessary to permit SWF within the framework of the FCC Order including timeframes and design standards. This approach also streamlines the application process and provides the City the ability to require providers to notify the public of pending installations of SWF. This approach is a shift in the connectivity/aesthetic balance originally sought due to the change in local control but will result in consistent and predictable design standards and process. The LUC can be updated as described above to reflect the FCC Order and resulting new process as part of the 2019 code and policy updates. Refer to Attachment D for policy applicable to proposed code changes and Master License Agreement.

Fiscal Impact

No fiscal impact is expected as a result of code amendments to the Telecommunications title. Administration of the Telecommunications Title will be met with current Development Services staffing levels through the permitting functions of the City.

The proposed approval of the Master License Agreement template should have minimal direct negative fiscal impact on the City because: (i) the City plans to charge and recover permit review and inspection time on an hourly basis (\$188/hour is City rate for 2019) depending on the number of hours required; and, (ii) a recurring fee of either \$270/year per pole if the FCC Order is upheld or \$1,500/year per pole if the Order is stayed or overturned will be collected.

OPTIONS

1. Take individual action by separate agenda items to:
 - Adopt the Ordinance amending Chapter 6.02 of the Bellevue City Code (BCC); adopting a new Chapter 6.08 BCC; and,
 - Adopt the Resolution approving the Master License Agreement (MLA) template and authorizing execution of individual MLAs with qualified applicants administratively.
2. Do not adopt the Ordinance or the Resolution and provide alternative direction to staff.

ATTACHMENTS & AVAILABLE DOCUMENTS

- A. Code Amendment – Chapter 6.02 BCC
- B. Updated New Code – Chapter 6.08 BCC
- C. Master License Agreement for Small Wireless Facilities on City Facilities
- D. Policy applicable to proposed code changes and Master License Agreement

AVAILABLE IN COUNCIL LIBRARY

FCC Order (Declaratory Ruling and Third Report and Order, released September 26, 2018
<https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>

New FCC Federal Regulations (CFR), including “Small Wireless Facilities” (SWF) definition, and shot clocks

OET, Bulletin 65: Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields (1997)

<https://transition.fcc.gov/bureaus/oet/info/documents/bulletins/oet65/oet65.pdf>

FCC’s “A Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance” http://wireless.fcc.gov/siting/FCC_LSGAC_RF_Guide.pdf