

**CITY COUNCIL AGENDA TOPIC**

Study Session on proposed amendments to the Bellevue City Code (BCC) and Land Use Code (LUC) to conform the City's regulations for Wireless Communication Facilities (WCFs) with federal law, and to update code related to the installation of Small Wireless Facilities (SWF) in the public street rights-of-way.

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**EXECUTIVE SUMMARY****DIRECTION**

Staff will present the proposed Bellevue City Code Amendment (BCCA) and Land Use Code Amendment (LUCA) for Wireless Communication Facilities (WCFs) and Small Wireless Facilities (SWF). Following discussion, staff will ask Council to enter a finding of necessity for Council to process this LUCA and direct staff to schedule a public hearing on the proposed LUCA. Staff will also ask Council to direct staff to prepare the BCCA for final action at a future meeting.

**RECOMMENDATION**

Enter a finding of necessity for the City Council to process the LUCA, then direct staff to schedule a public hearing on the proposed Wireless LUCA, and to prepare the Wireless BCCA for final action at a future meeting.

**BACKGROUND/ANALYSIS****Background**

The proposed BCCA and LUCA are a third phase in a series of amendments to address changes in WCF technology and regulation. On January 22, 2019, the City Council adopted Ordinance No. 6454, establishing a new Chapter 6.08 Small Wireless Facilities in the Rights-of-Way in the Telecommunications Title (Title 6) of the BCC. On April 22, 2019, the City Council adopted Ordinance No. 6462 to add provisions on purpose-built poles and strand-mounted facilities to Chapter 6.08 BCC. These actions were necessary to regulate the deployment of SWFs in the public street rights-of-way consistent with a Federal Communications Commission (FCC) order limiting local control of SWFs, described below, as well as to establish SWF design criteria and separate and expedite the SWF approval process from the requirements for larger WCFs, such as cell towers and other macro facilities. SWFs have smaller radios and antennas than the larger macrocell sites, such as a traditional cell tower. SWF facilities can be installed on city street light poles or wood utility poles to add 4G and 5G capacity in high traffic areas such as Downtown. SWFs have been recognized as an important strategy to advance 5G and overall wireless connectivity in Bellevue.

The deployment of SWFs in Bellevue also continues to be of high interest to telecommunication companies as well as the Bellevue Chamber of Commerce. Four SWFs have been completed in Downtown, and three additional permits have been issued for SWF construction. Additionally, the Transportation Department has partnered with carriers, with the support of the Bellevue Chamber of Commerce, to continue to streamline the permitting process and develop working relationships to advance SWF deployments. Part of this partnership has been the development of proposed code amendments to Chapter 6.08 BCC, to apply what we have learned from deployment of this relatively new wireless technology over the past couple of years to the BCC.

Finally, although regulations for WCFs in the BCC have been amended in recent years, the regulations for WCFs in the LUC, codified under Chapter 20.20.195, have not been significantly amended since 2003. Thus, a LUCA is proposed to update the WCF regulations for consistency with new technology, as well as federal laws.

### **Federal Communications Commission (FCC) Orders**

Over the past decade or so, the FCC adopted numerous orders intended to speed up the deployment of WCFs. Longstanding federal law requires localities to act on WCF applications within a “reasonable period of time.” By orders issued in 2009 and 2018, the FCC adopted four deadlines, or “shot clocks”, that establish the presumptively reasonable time for a local government to review and reach a final decision on applications for a WCF. The 2018 order also placed limits on fees cities could charge and aesthetic standards cities could impose for SWFs. The order also established a national “materially inhibits” standard for an impermissible effective prohibition of service, and provided that a failure to act on a SWF application within the applicable shot clock presumptively constitutes an effective prohibition.

Additionally, to implement a law adopted by Congress in 2012, the FCC issued regulations in 2014 establishing a 60-day shot clock for a new category of wireless applications known as eligible facilities requests (EFRs). These applications involve modifications and additions to existing WCFs. If a proposed modification or addition qualifies as an EFR under criteria established by FCC rules, the application must be approved and may not be denied. A city’s failure to act within this FCC shot clock period can result in the application being deemed approved under federal law. Recently in 2020, the FCC adopted two new orders which clarified and further expanded the reach of EFRs.

In 2018, the FCC adopted another order that, among other things, prohibits express and de facto moratoria on the acceptance, processing or approval of applications or permits necessary for the deployment of facilities used for wireless services and telecommunications services. This means that there can be no pause in accepting or processing applications to allow a city to study and address potential issues.

### **Proposed BCCA**

The proposed BCCA, as noted above, is intended to continue City efforts to streamline the permit review process for SWFs in the public rights-of-way, as well as revise standards to ease the deployment of SWFs. Additionally, the BCCA will align the City’s WCF regulations for facilities in the right-of-way with the FCC orders described above. Specifically, the proposed amendments include:

- Expanding pole mounting location options for SWF antennae;
- Allowance of unified enclosures and other equipment and antennae on the same pole;
- Allowance of both pole- and strand-mounted SWFs on the same pole;
- Increasing the time allowed from permit issuance to SWF installation and operation
- Codifying procedures for EFRs in accordance with FCC orders; and
- Allowing temporary installations for redevelopment activity

The specific amendments proposed in the BCCA can be found in Attachment A.

## **Proposed LUCA**

The proposed LUCA is intended to update the code based on changes in technology and federal regulation, while also maintaining allowable requirements for deployment and design of WCFs that already exist in the code. These updates include:

- Revising permitting procedures for consistency with FCC shot clocks;
- Codifying procedures for EFRs and temporary WCFs; and
- Updating definitions for certain WCF elements for consistency with industry standards and federal directives.

Additionally, the LUCA will establish provisions to regulate SWFs on private property. A new definition of SWFs will be added into LUC 20.20.195, which will be consistent with federal definitions for SWFs. Otherwise, these facilities will be subject to the same locational and design standards as any other WCF. Because of their smaller size, however, SWFs will likely be able to meet these standards without issue.

Details on the proposed amendments, as well as their relationship to the LUCA decision criteria in LUC 20.30J.135, can be found in the staff report (Attachment B), and the specific amendments are included in the strike-draft (Attachment C).

## **Review Process**

The proposed BCCA and LUCA are being presented simultaneously at this evening's meeting. However, because of additional noticing and procedural requirements for LUCAs, these items will be processed separately moving forward. Following tonight's meeting, Council may direct staff to prepare the BCCA ordinance for final action at a future meeting, whereas the LUCA will require a Notice of Application and Public Hearing to be distributed, followed by a required public hearing at a future date. Following the hearing, Council may take final action on the proposed LUCA.

## **Engagement**

Staff has implemented multiple modes of outreach for the proposed amendments to ensure the public, stakeholders, and interested parties have the opportunity to be informed and to provide comments.

1. Process IV LUCA Requirements. Process consistent with Chapter 20.35 LUC procedural requirements to provide opportunities for public comment, including:
  - Notice of Application and Public Hearing for the LUCA issued at least 14 days prior to the public hearing.
  - Public hearing on the proposed LUCA (to be scheduled).
2. Direct Engagement and Feedback. Information gathering and code-testing with carriers and contractors to determine needed changes to the BCCA and LUCA.
3. Online Presence. A City webpage to provide opportunities for the public to stay informed and to request additional information, including:
  - Information on LUCA progression and milestones;
  - Staff contact information; and
  - LUCA documents and background information.

## POLICY & FISCAL IMPACTS

### Policy Impact

The proposed BCCA and LUCA will align the City's WCF regulations with recent changes to wireless technology and applicable federal law. This will facilitate a predictable and streamlined review process for WCFs both in the public rights-of-way and on real property. Additionally, the amendments serve to enable needed wireless coverage throughout the City, while maintaining standards that mitigate their aesthetic impacts.

These actions are also consistent with the following Comprehensive Plan policies:

- **Comprehensive Plan Policy UT-79.** Require the placement and design of wireless communication facilities in a manner that minimizes the adverse impacts on adjacent land uses.
- **Comprehensive Plan Policy UT-83.** Recognize that wireless communication facilities will be deployed in all areas of the city to provide coverage and capacity consistent with the changing use of wireless technology. Minimize the attendant impacts, particularly the visual impacts of, wireless communication facility towers, lattice towers and structures by utilizing criteria for the design and location of such facilities that appropriately balance the need for wireless services and the impacts of the necessary facilities.
- **Comprehensive Plan Policy UT-89.** Encourage the co-location of telecommunications equipment on city sites that reduce total impact of antennas on the community.
- **Comprehensive Plan Policy UT-90.** Periodically review and update wireless facility regulations to respond to changes in technology and community conditions to balance impacts with the need for service.

### Fiscal Impact

There is no fiscal impact associated with adoption of the proposed BCCA or LUCA.

## OPTIONS

1. Enter a finding of necessity for the City Council to process the LUCA, then direct staff to schedule a public hearing on the proposed Wireless LUCA, and to prepare the Wireless BCCA for final action at a future meeting; or
2. Provide alternative direction to staff.

## ATTACHMENTS

- A. Proposed BCCA Strike-Draft
- B. LUCA Staff Report
- C. Proposed LUCA Strike-Draft

## AVAILABLE IN COUNCIL LIBRARY

N/A