

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

January 7, 2019
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Chelminiak, Deputy Mayor Robinson, and Councilmembers Lee, Nieuwenhuis, Stokes, and Zahn

ABSENT: Councilmember Robertson

1. Executive Session

Mayor Chelminiak called the meeting to order at 6:00 p.m., and declared recess to Executive Session for approximately 45 minutes to discuss one personnel matter.

The meeting resumed at 6:48 p.m., with Mayor Chelminiak presiding.

2. Study Session

- (a) Response to Federal Communications Commission (FCC) Order Preempting Local Authority to Regulate Small Cell Deployment

City Manager Brad Miyake introduced discussion regarding the regulation and deployment of small cell wireless technology. He said staff is seeking Council direction on proposed amendments to the City Code and the development of the Master License Agreement for the deployment of small cell technology.

Mark Poch, Transportation Assistant Director, said the purpose of the discussion is to review staff's proposed response to the Federal Communications Commission (FCC) order preempting local authority to regulate small cell deployment. The response includes code changes as well as the establishment of a Master License Agreement (MLA) outlining the provisions for the wireless carriers' use of City-owned streetlight poles.

Mr. Poch noted that one of the six main elements of the Bellevue Smart plan is to provide connectivity for residents and businesses. He said staff last discussed small cell technology with the Council in December 2016. He recalled discussion regarding the need for reliable, predictable, equitable, and affordable wireless service coverage.

The FCC order preempting local authority was issued in September. The order changes the City's ability to regulate certain aspects of the deployment of small cell technology. Mr. Poch noted that 5G technology will build on the current 4G system and is anticipated to involve larger equipment.

Monica Buck, Assistant City Attorney, said the FCC order was issued in September 2018 and goes into effect on January 14, 2019. However, the adoption of the City's aesthetic requirements is not required until April 15, 2019. The FCC order limits local control of small wireless facilities. Ms. Buck said the City is participating with a coalition of cities that is challenging the order due to the loss of local control. However, the City will move forward with implementing the FCC order while that legal challenge moves forward.

The FCC order changes the legal standard of what is considered an "effective prohibition." The City cannot prohibit or effectively prohibit the provision of personal wireless services. However, the courts have issued different interpretations of that provision. Courts in Washington state have determined that if a carrier does not meet local regulations, the carrier must show that there is a significant gap in wireless service coverage and that their proposed deployment is the least intrusive means to enhance service.

Ms. Buck said the FCC order adopts a different, more carrier-friendly interpretation of that legal standard. The order states that a local regulation that materially inhibits expanding or adding wireless services is an effective prohibition and not authorized under federal law. Ms. Buck said the order establishes a definition for a small wireless facility. An antenna can be up to three cubic feet, and the order does not limit the number of antennas that can be deployed on a single structure. The order provides that any equipment must fit within a 28-cubic-foot envelope.

The FCC order prohibits cities from charging market-based rent for the use of light poles, and it caps the City's ability to recover its actual costs. The order authorizes local governments to charge the wireless carriers \$270 per pole annually. The order establishes a test for permissible design requirements. The requirements must be reasonable, objective, published in advance, and no more burdensome than those applied to other types of infrastructure deployments.

Ms. Buck said the order allows 60 days to process permits for equipment on existing poles and 90 days to process permits for new poles. The City previously had 150 days to process a permit application for a wireless facility. Ms. Buck recalled that, in 2016, the Council and staff discussed establishing a City-preferred design for small cell technology. However, the short timeline for processing permits does not allow sufficient time to fully address design considerations. Ms. Buck noted that, if the FCC order is overturned, the City will charge a market rate of \$1,500 per pole annually.

Prior to the FCC order, the City encouraged public input regarding the design of wireless facilities and had more discretion in the design guidelines. The FCC order does not address a public engagement process and the design guidelines are prescriptive.

Ms. Buck said the City created an interdepartmental team, researched other cities, and consulted with outside counsel to develop a response to the FCC order. Staff worked with the wireless carriers to develop a two-pronged approach involving code amendments and the use of a Master License Agreement (MLA).

Mr. Poch said the code changes amend Bellevue City Code Title 6, Telecommunications, to be consistent with the FCC order. The amendments address the regulation of small wireless facilities under the Telecommunications Code instead of under the Land Use Code. The code applies to both City-owned and utility-owned poles. Mr. Poch noted that future code amendments could be warranted to address deployments outside of the City's ROW.

Ms. Buck said the MLA establishes provisions for the use of City property and provides an umbrella agreement covering all of the City's streetlights. The MLA has a 10-year term with one-year renewals and addresses rent, the Site License Agreement (SLA) for each pole, radio frequency emissions compliance, insurance, bond, indemnification, and relocation. The City anticipates that several carriers will apply for a Master License Agreement. Ms. Buck said staff is asking the Council to approve the form and to allow staff to execute each MLA administratively, assuming the carriers do not want changes to the agreement.

Mr. Poch described the expected visual impacts of the new small cell wireless facilities. A pole-mounted antenna is restricted to 15 cubic feet, or three cubic feet per antenna for a maximum of five antennas. A combination of equipment on the pole and on the ground can be up to 28 cubic feet. Mr. Poch said the guidelines apply to both City-owned and utility-owned poles. He noted that 5G equipment is expected to be larger than 4G antennas, and existing concrete poles will be replaced with metal poles for structural support. The deployment of the small cell equipment will begin in the Downtown. Mr. Poch noted that the FCC has the sole authority to set the standards for radio frequency emissions. The City will require providers to demonstrate compliance when they install their equipment.

Mr. Poch said staff is seeking Council direction to return on January 22 for the adoption of the code amendments, approval of the MLA form, and the authorization to execute agreements with specific carriers administratively.

Councilmember Nieuwenhuis thanked staff for their hard work, noting that this is a great example of working with the private sector to identify solutions. He commented on the importance of keeping pace with technology given the demand for service. He has heard from a number of carriers that their networks are operating at capacity. Mr. Nieuwenhuis said the deployment of small cell technology will provide the infrastructure to accommodate future 5G equipment. He expressed support for the code changes and the Master License Agreement.

Responding to Mr. Nieuwenhuis, Ms. Buck said that, if the FCC order is stayed or overturned, the City will revert to charging market rates for renting space on City-owned poles, review design standards, and possibly adjust the timeline for processing permits. In further response, Mr. Poch said staff received the letter from wireless carriers late that afternoon. He and others will work with Carol Helland, Code and Policy Director, to develop a response to the suggested provisions.

Councilmember Zahn thanked staff for working with the wireless service carriers. Responding to Ms. Zahn, Mr. Poch said the greatest need for implementing the equipment is in the Downtown. However, he was not sure of the carriers' plans for subsequent deployments. In further response, Mr. Poch said the City anticipates that at least half of the poles in the Downtown will have small cell equipment. He said the carriers will be responsible for installing the new metal poles. He noted that it might be necessary in the future to address the installation of equipment on private property outside of the right-of-way. Mr. Poch said the radio frequency emissions reports will be reviewed by City staff, who can request further testing if desired, and the information will be available to the public.

Responding to Councilmember Zahn regarding notification to neighbors, Mr. Poch said the City will use the permitting process to provide notice of construction. However, given the short timeline for processing permits, it will not be possible to provide notice before the design process. Mr. Poch said the City will ask carriers to provide notice to adjacent residents and businesses.

Councilmember Stokes said he appreciates how staff has addressed the issue and worked with the wireless carriers. He said it is important for Bellevue to keep pace with new technologies. He said it will be important for the public to understand the City's approach and limitations. Mr. Stokes said he appreciated the carriers' coordination with the City and he looks forward to the deployment.

Councilmember Lee expressed support for the code changes and MLA template. He concurred with Councilmember Nieuwenhuis' comments regarding the importance of the technology and future 5G service. Mr. Lee said he hopes the proposal in the letter from AT&T can be accommodated by the City.

Responding to Mr. Lee, Mr. Poch said permits will be processed as they are submitted to the City. However, the City wants to be fair and equitable and will not let one carrier deploy equipment on every available pole in the Downtown. Mr. Poch said it is unlikely that more than one carrier would want to use the same pole. He said the City hopes there is a sufficient number of poles to accommodate all of the wireless carriers.

In further response to Mr. Lee, Mr. Poch said the code amendments will apply to Puget Sound Energy's poles. However, they will not be subject to Master License Agreements with the City. The carriers will cover the cost of converting concrete poles to metal. Responding to Mr. Lee, Ms. Buck said the FCC order does not address equipment on private property, which would be regulated under the Land Use Code. In further response to Councilmember Lee, Mr. Poch said the City will charge its usual hourly permit processing fees to recover its costs.

Deputy Mayor Robinson said she supports the goal of reliable, predictable, and equitable service throughout the community. She would like the technology to be deployed to serve libraries, community centers, and schools.

Responding to Deputy Mayor Robinson, Ms. Buck said wireless facilities are currently regulated under the Land Use Code, which allows more subjective, discretionary standards. The City has historically had 150 days to process a permit for a wireless facility, which allows time for public engagement. The FCC order requires the City to adopt prescriptive, objective design standards that do not allow for public input. In further response to Ms. Robinson, Ms. Buck said the FCC order limits the City's regulatory authority and local control.

Deputy Mayor Robinson expressed concern regarding the significant loss of local control and authority. However, she expressed support for moving forward.

Responding to Mayor Chelminiak, Mr. Poch confirmed that the FCC order provides design guidelines regarding the size and installation of the equipment.

Mr. Chelminiak acknowledged the need for updated wireless service for the public and to meet Smart City objectives. He thanked the carriers for working with staff and attending the Council meeting. He believes the process is moving in the right direction. He noted the tension between people wanting the service but not necessarily wanting to be near the equipment and facilities.

Mayor Chelminiak concurred with Deputy Mayor Robinson's interest in providing equity in the citywide deployment of the equipment. Responding to Mr. Chelminiak, Ms. Buck said that new poles requested by carriers will be regulated through the conditional use permit (CUP) process outlined in the Land Use Code.

Mayor Chelminiak thanked staff for the presentation and noted a Council consensus that staff return for formal action on January 22.

3. Council Discussion of Upcoming Items: None.

At 7:40 p.m., Mayor Chelminiak declared recess to the Regular Session.

Kyle Stannert, CMC
City Clerk

/kaw