



CITY OF BLAINE

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Planning Commission Study Session Report

Wireless Communication Facility Regulations

To: City of Blaine Planning Commission
From: Stacy Clauson
Date: January 21, 2022
Re: Wireless Communication Facility Regulations

Summary

The Community Development Services Department (CDS or “the Department”) is providing this memorandum in advance of the Planning Commission meeting scheduled for January 27, 2022 at 6 PM. The meeting will include a study session to introduce amendments to Title 17 to address wireless communication facilities. The following sections of this document describe the regulatory background for the proposed change; the scope of amendments; and the proposed schedule for review of amendments. Attachment 1 includes a summary of the proposed changes. This report is available at the following city website: <https://www.ci.blaine.wa.us/1079/Wireless-Communication-Facility-Regulati>

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As part of the review process, the Department will be reaching out to wireless industry representatives to provide notice of this update effort. The Department has been in contact with Gregory Busch, a consultant with the Wireless Policy Group LLC, a company involved in wireless permitting, public policy advocacy, and hearings processes. Mr. Busch has offered to attend the January 27th meeting and make a presentation to the Planning Commission to provide background information on the technology changes in this industry.

Background and Discussion

Wireless facility siting is governed by federal, State, and local law. The City’s wireless regulations were adopted in 2003 and are currently codified in BMC [17.106.030](#) (Wireless telecommunications facilities). Since that time, there have been changes in federal law and regulations, as well as technology, which have necessitated this update to the City’s regulations.

This amendment is part of the Planning Work Program approved by the City Council under Resolution 1843-21.

Regulatory Context and Current City Code

Local jurisdictions retain some of their traditional authority over the siting of facilities, but that authority is significantly restrained by federal law. Specifically, the Telecommunications Act of 1996 provides that local regulation shall not:

- (1) Unreasonably discriminate among providers of functionally equivalent services;
- (2) Prohibit or have the effect of prohibiting the provision of personal wireless services; or
- (3) Regulate the placement of wireless facilities on the basis of the health effects of radio frequency (RF) emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions.¹

The City's current regulations were adopted in conformance with these provisions.

2012: The Spectrum Act and FCC-14-153

Since the adoption of the City's current regulations, the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") was passed. The Act removes barriers to wireless infrastructure deployment by requiring local jurisdictions to streamline their review processes and meet strict timelines when reviewing wireless facility modifications. The FCC approved rules interpreting Section 6409 and those rules went into effect on April 8, 2015. In part the rules require the following:

1. Prohibit local governments from denying eligible facilities' requests to modify existing wireless towers or stations if the modification does not substantially change the dimensions of the facility.
2. Revised "shot clock" rules, which limits the time the jurisdiction has to approve or deny an application. Failure to meet the timeline constitutes approval of the application².
3. Established required processes for new wireless technologies that use smaller size antennas, but use more of these antennas spread out over a coverage area (ex: Microfacilities or Small Cell sites).

Additional background on the rules may also be found on the following webpages from the National League of Cities and MRSC:

- <https://www.naco.org/sites/default/files/Model-Ord-NACo.pdf>

¹ 47 U.S.C. 332(C)(7).

² The concept of "shot clocks" is similar to the permit process amendments that have been put in place in Washington State under RCW 36.70B.010 (Regulatory Reform Act of 1995), which established an integrated environmental and land use permitting program requiring a complete application to be processed within 120 days. However, the "shot clocks" have different timelines, apply to all permits that are necessary in order to deploy cell facilities (not just land use permits), and have specific provisions in place for when the clock starts and stops that differ from prior regulatory reform efforts.

- <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/March-2015/Model-Ordinances-for-New-Wireless-Antenna-Facility.aspx>

2018: FCC-18-133

In 2018, the FCC adopted additional rules focused on new technology like small cellular facilities. In part, these rules require the following:

- Expanded the use of the term collocation³;
- Provided guidance on certain state and local non-fee requirements, including aesthetic and undergrounding requirements.
- Establishes two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds) and codifies the existing 90 and 150 day shot clocks for non-small wireless facility deployments.

Additional background on the rules may also be found on the following webpage from MRSC:

- <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/January-2019/5G-Preemption.aspx>

2020: FCC-20-75 and 20-153

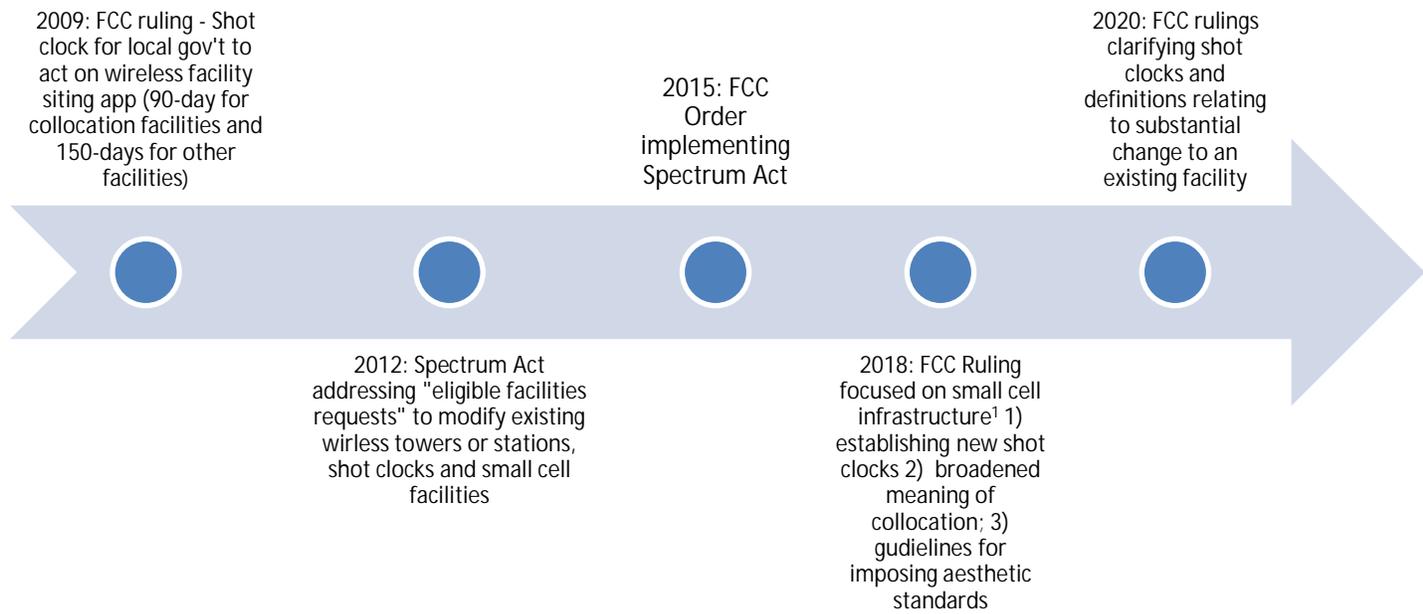
In 2020 the FCC issued additional rulings that broadened the FCC prior focus on small cellular facilities and started to address regulations for larger facilities. The ruling addresses modifying existing wireless communications facilities, existing and new concealments, and it adds clarifications on shot-clock tolling and the definition of equipment cabinets.

Additional background on the rules may also be found on the following webpage from MRSC:

- <https://mrsc.org/Home/Stay-Informed/MRSC-Insight/July-2020/FCC-Declaratory-Ruling-Expands-Guidance-for-Certai.aspx>

In general, the following is a chronology of changes at the federal level that now need to be incorporated into the City regulations:

³ Collocation previously focused on placement of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Under the new provisions, collocation is defined more broadly to include mounting or installing an antenna facility on a pre-existing structure.



¹: Small cell wireless facilities feature equipment that is smaller and more densely sited than macro wireless facilities and are primarily located in the right-of-way

The Blaine Municipal Code must be updated to respond to these laws and rulings⁴, including:

Type	Description
Definitions and Standards	New sections needed to respond to concepts established in the FCC orders, including: <ul style="list-style-type: none"> • Small wireless facilities (as opposed to traditional macrofacility infrastructure); • Collocation, and • Eligible facility modifications.
Review Processes and Timelines	New sections needed to respond to shot clock requirements.
Submittal Requirements	More detailed application submittal requirements to aid in meeting shot clocks.
Aesthetic Standards	Review of existing aesthetic guidelines to ensure that the provisions are technically feasible and reasonably directed at remedying aesthetic harms.

The summary outline in Attachment 1 provides an overview of the new regulations. The proposed regulations are still in development and will be provided for Planning Commission review at a future meeting.

⁴ Applicants may bring legal claims related to The Spectrum Act and the implementing rules established by the FCC to any court of competent jurisdiction.

Technology Advances

Mobile wireless services function by transmitting information between devices over radio waves through a network of antennae and similar equipment. Each node in these networks is a cell site: a collection of communications equipment capable of receiving and transmitting wireless signals over a given area (a cell).

Until recently, wireless phone service has been managed using large antennas mounted on towers located on both public and private property. Wireless carriers anticipate that installing more cell towers covering large areas will not keep up with projected demand for high-speed wireless data⁵.

One way to address the capacity crunch is by deploying “small cells”. Generally, “small cell” refers to both the smaller coverage area of the wireless signal, and the smaller size (compared to macrocell towers) of the infrastructure. Because the coverage area is small, a small cell network requires placement of a large number of cell sites in close proximity to each other. The antennas are much smaller than those deployed at macrocell sites, and are often attached to buildings, rooftops and structures in public rights-of-way (ROW), including utility and light poles and other street furniture. Other communities have seen small cell equipment initially being designed to meet current 4G wireless technology standards, but these facilities may be upgraded or replaced with future 5G higher speed equipment as technology advances.

The terms “4G” and “5G” are abbreviations for 4th and 5th generations of wireless technology standards. The standards are differentiated by their performance capabilities – how much and how fast the data moves through the networks and the applications that the network can support.

Unlike 4G technology, which primarily relies on larger “macro” antennas to send and receive wireless signals at relatively low frequencies in the radio spectrum, 5G will rely on more densely sited small cell facilities to send and receive signals at higher radio frequencies. 5G is anticipated to provide faster wireless connections, improve existing wireless uses for voice and data, and facilitate new concept technologies.

Related Efforts

The Public Works Department will be drafting concurrent amendments to Blaine Municipal Code Chapter 12 to address right-of-way specific review processes and design standards. Amendments to Chapter 12 are not within the purview of the Planning Commission; instead, review will be coordinated through the City Council. Public Works and CDS are coordinating on these issues and anticipate bringing all of the provisions to Council at the same time.

⁵ City of Bellingham frequently asked questions about small cell deployment in Bellingham: <https://cob.org/wp-content/uploads/small-cell-faq.pdf>

Next Steps

The Department will continue to complete text edits to the wireless communication facility standards prior to release of the proposal for public review and comment. The amendments will be processed under the provisions established in BMC [17.04.050](#), which require environmental review, at least one public hearing, and a public comment period before the Planning Commission. Figure 1 contains a schematic of the review process and estimated timeline. The City Council must approve the final adoption.

Table 1: Estimated Timeline for Code Amendments

ACTIVITY	JANUARY	FEBRUARY	MARCH	APRIL
Planning Commission Study Session (S)	1/27/2022 (S)			
Commerce Review		02/03/2022 to 04/04/2022		
SEPA Issuance and Appeal Period		02/03/2022 to 02/17/2022		
Publish Notice of Availability and Planning Commission Public Hearing		Send to newspaper on 02/24/2022 publish on 02/28/2022		
Transmit Staff Report and Attachments to the Planning Commission			03/03/2022	
Planning Commission Public Hearing (PH)			03/10/2022 (PH)	
Planning Commission Deliberation ⁶			03/24/2022	
Transmit RFCA; Draft ORD; and Amendments to the City Council				04/08/2022
City Council Deliberations and Potential Adoption of Amendments				04/11/2022 (S)

⁶ If needed.

Send Notice of Adoption to Commerce				04/21/2022
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List of Attachments

- 1. Summary of amendments

SUMMARY OF PROPOSED TEXT AMENDMENTS

1. Create new Chapter in Title 17 for wireless communication facilities (BMC 17.107) and move existing code in BMC 17.106.030 to new chapter.
2. Other changes

Section	Description
BMC 17.107.010 - Purpose	Amend the purpose statement as needed to address the additional federal legislation that addresses regulation of wireless communication facilities.
BMC 17.107.020 - Definitions	Add a definitions section. Definitions are generally consistent with 47 CFR Subpart U , which addresses local government regulation of the placement, construction, and modification of personal wireless service facilities
BMC 17.107.030 - Applicability	Add a new Applicability section that outlines permit(s) required for different installation types, including proposed installations within the right-of-way and outside of the right-of-way. This section also addresses non-conforming structures.
BMC 17.107.040 - Exemptions	Add a new Exemptions section addressing proposed development exempt from obtaining a permit under this section.
BMC 17.107.050 - Review and approval process	Add a new section for review and approval processes. This new section must respond to the “shot clocks” that have been established under FCC declarations. These regulations need to respond to these provisions from federal law ¹ : <ul style="list-style-type: none"> • Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days. • Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days. • Review of an application to deploy a Small Wireless Facility using a new structure: 90 days. • Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.
BMC 17.107.060 - Submittal requirements.	Add a new section outlining submittal requirements.
BMC 17.107.070 - Macrofacility Regulations	Section devoted to macrofacilities. These are the large wireless communication facilities that the City’s current codes have primarily addressed, and therefore this section contains much of the carryover language from the existing BMC 17.106.030 , with the exception that definitions and review process information has been moved to the sections noted above.

¹ [47 USC 1.6003](#)

BMC 17.107.080 - Eligible Facility Modification (EFM) Regulations	Add a new section addressing eligible facility modifications. An eligible facilities request is a qualifying request for modification of an existing personal wireless service facility (PWSF) tower or base station that does not substantially change the physical dimensions of the tower or base station and that involves the collocation, removal or replacement of transmission equipment. Federal law establishes a streamlined process for local government review of applications to deploy wireless telecommunications equipment on existing infrastructure. The federal laws on eligible facilities requests are in section 6409(a) of the Spectrum Act of 2012 (codified as 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100). The Federal Communications Commission (FCC) released a Declaratory Ruling on June 10, 2020 (FCC 20-75), clarifying aspects of the federal regulations related to eligible facilities requests.
BMC 17.107.090 - Small Wireless Facilities Regulations	Add a new section addressing small cell facilities. This new section is intended to respond to orders issued by the FCC in 2018 and 2020 relating to small cell facilities
BMC 17.107.100 - Equipment facilities	Carry forward existing provisions on equipment structures, with changes, as needed to comply with FCC orders.
BMC 17.107.110 - Additional Requirements Applying to All Wireless Telecommunication Facilities	Carry forward existing provision, except provisions that have been moved to a new section or eliminated due to inconsistency with FCC orders (e.g., provisions about placement on utility poles).
BMC 17.107.120 - Lapse of Approval	New section addressing lapse of approval
BMC 17.107.130 - Appeals.	New section addressing appeals