



STAFF REPORT

Minor Amendments to Camas Municipal Code
Chapter 18.35 Wireless Communication Facilities
File# MC19-02

TO Bryan Beel, Chair
Planning Commission

FROM Lauren Hollenbeck, Senior Planner

DATE June 11, 2019

Summary

The proposed code updates are in response to the Federal Communications Commission (FCC) ruling on wireless communication facilities, particularly in regards to small cell wireless facilities and management of local right-of-ways, which have been in effect since September 2018. City staff, with input from telecommunication providers such as AT&T, have proposed amendments to Chapter 18.35 *Wireless Communication Facilities* for compliance with the new FCC ruling. Other minor amendments include updates to clarify sections to Chapter 18.35.

The following attachments are provided for your review: 1) The proposed CMC amendments shown as red strike-through text or underlined, 2) Clean version of CMC Chapter 18.35 3) The September 2018 FCC ruling, 4) New York SMSA Limited Partnership v. Town of Clarkstown case law

Chapter 18.35 Wireless Communication Facilities

Chapter 18.35.020 - Definitions

Suggest adopting the FCC definitions in 27 CFR Section 6002 for “antenna”, “antenna equipment”, “collocation”, “facility or personal wireless facility”, “small wireless facilities”, and “structure”.

Chapter 18.35.030 - Towers

Remove footnote 3 under Table 18.35-1 and footnote 5 in Table 18.35-2 regarding “gap in service”. The recent FCC Order expressly rejects the “significant gap” test previously applicable in the 9th Circuit Court of Appeals. Order footnote 94, page 19 of FCC ruling.

The federal court previously developed the significant gap test to measure the quality of coverage and show gaps where there was no coverage. However, the new FCC ruling made clear that a local requirement is an unlawful “effective prohibition” if it “materially limits or inhibits” the ability for a provider to provide a service (i.e. gap coverage).

Chapter 18.35.040 – Collocation of antennas, DAS, and small wireless facilities

CMC 18.35.040.E *DAS and small wireless facilities*. This section identifies the development standards applicable to these facilities within the right-of-way, which include new Public Works Small Wireless Facility Design Standards, an encroachment permit, a building permit, and other applicable agreements such as a franchise agreement.

The Type II review referenced in this section is no longer applicable and stricken from this section. The FCC ruling established “shot clocks” for review of WCF’s per 27 CFR Section 6003. Review timelines are added in a new section CMC 18.35.051 discussed further below.

Chapter 18.35.050 – Tower, sharing, collocation and preferred tower locations

Section C prohibits new towers in all R and MF zones however Section D and CMC 18.35.030 *Towers* permits new towers in all R and MF zones. Further, the code clearly outlines the steps for building a tower in a residential zone. Therefore, CMC 18.35.050.C has been stricken.

Chapter 18.35.051 – Application review timeframes

This is a new section to address the FCC ruling that established “shot clocks” for review of WCF’s 27 CFR Section 6003. This new ruling shortens the time cities have to process applications for small wireless facilities (SWF’s) or other facilities to either 60 or 90 days, depending on whether they are being mounted on an existing or new structure.

If an initial application for SWF’s is deemed incomplete by staff, it must be done within 10 days of application submittal accompanied with a written notice that clearly and specifically identifies the missing documentation. The review timeframe will be reset at the beginning of the review timeframe upon submittal of the missing documents and information.

If an initial application for WCF’s is deemed incomplete by staff, it must be done within 30 days of application submittal accompanied with a written notice that clearly and specifically identifies the missing documentation. The review timeframe will pause (not reset) until the missing information is submitted.

Pre-application meetings are not required. However, if a pre-application meeting is required it is included in the application review period.

Chapter 18.35.060 – Application submittal requirements

CMC 18.35.060.D *Visual Analysis*. AT&T suggests deleting all preferences for use of alternative technology because such preferences are preempted by federal law- *New York SMSA Limited Partnership v. Town of Clarkstown*. Under federal law, technology options cannot be regulated but aesthetics can for example. As such, the following language is proposed for removal “technology design options for the facility”.

In the same sentence staff proposes removing reference to “closing the same gap” for compliance with the FCC ruling that rejects the significant gap test as discussed above.

CMC 18.35.060.G.3 *Description of service coverage*. Remove reference to “close a gap” for compliance with the FCC ruling that rejects the significant gap test as discussed above.

CMC 18.35.060.H *DAS and SWF*. Subsections 1 and 2 are development standards, which are already referenced in CMC 18.35.040, and therefore do not need to be included under application submittal requirements. These subsections are proposed for removal.

CMC 18.35.060.J *Accessory Equipment*. This section is a development standard, which is already included under CMC 18.35.070(J), and therefore does not need to be included under application submittal requirements. Further, this section requires accessory equipment to be placed underground whereas CMC 18.35.070(I) allows placement on a pole. This section is proposed for removal.

Chapter 18.35.070 – General development standards applicable to WCFs

CMC 18.35.070.C *Visual Impact*. AT&T suggests deleting all preferences for use of alternative technology because such preferences are preempted by federal law- *New York SMSA Limited Partnership v. Town of Clarkstown*. Under federal law, technology options cannot be regulated but aesthetics can for example. As such, the following language is proposed for removal “design alternatives such as the use of microcell”.

In the same sentence staff proposes removing reference to “close the gap” for compliance with the FCC ruling that rejects the significant gap test as discussed above.

CMC 18.35.070.I *WCFs in the Public Right-of-Way*. The new FCC ruling requires limiting aesthetic review and requirements (including undergrounding and historic/environmental requirements) to those that are reasonable for SWFs, comparable to requirements for other rights-of-way users. As such, this section clarifies that SWFs in ROW’s are subject to the new Public Works design standards.

Chapter 18.35.090 – Exceptions from standards

CMC 18.35.090.D.3 and 4 *Criteria*. Remove references to “significant gap in service” for compliance with the FCC ruling that rejects the significant gap test as discussed above. The FCC ruling further clarifies that the applicable test of when a local regulation has “the effect of prohibiting” wireless service is only when the regulation “materially inhibits or limits” the ability of the provider to provide wireless service.

Chapter 18.35.130 – Independent technical review

A third party review is more likely for a proposal that might be more controversial and/or difficult to review (i.e. such as a new tower in a residential zone or a CUP) opposed to SWF’s in ROW’s.

The FCC ruling prohibits cities from assessing fees that include anything other than a “reasonable approximation” of “reasonable costs” directly related to maintaining the right-of-way and the small cell facility. For example, excessive and unreasonable costs such as excessive contractor or consultant fees may not be passed to the applicant.

Recommendation

Staff recommends the Planning Commission conduct a public hearing, accept testimony, deliberate, and make a motion to forward the amendments to Chapter 18.35 to City Council for adoption.