

AGENDA ITEM SUMMARY
February 22, 2016

To: Eugene Planning Commission
From: Anne C. Davies, City Attorney's Office
Subject: Cell Tower Code Changes

ACTION REQUESTED

This work session is an opportunity to provide the Planning Commission with an introduction to a package of land use code changes to the City's requirements for siting cell towers.

BRIEFING STATEMENT

Late last year, City Council directed staff to initiate code changes to the city's telecommunications ordinance. The proposed changes are intended to provide further protections to residential areas from the adverse impacts of cell towers, while complying with federal regulations designed to protect telecommunications companies from certain local government regulations. In particular, local government regulations may not prohibit or have the effect of profiting the provision of wireless services. That is, the telecommunications companies must be allowed to construct facilities where such facilities are needed to fill a "significant gap in service."

The City Council identified four specific areas for revision, based on the City Attorney's review of recent changes to the City of Glendale, California's cell tower regulations. Those four areas are outlined in the City Attorney's memo to the City Council, dated October 21, 2015, provided as part of Attachment A. In summary, the Council directed staff to revise the cell tower provisions to:

1. Prohibit cell towers in residential zones except through a process, such as a variance, as required to comply with federal law;
2. Tighten up application requirements and approval criteria to better address a significant gap in service;
3. Include a requirement that all applications for new cell towers include an alternative configuration analysis;
4. Adjust height limits to clearly prohibit heights greater than necessary to fill the identified service gap.

FOR MORE INFORMATION

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ATTACHMENT

A. City Council Agenda Item Summary (AIS) for November 9, 2015

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Work Session: Cell Towers

Meeting Date: November 9, 2015
Department: Planning and Development
www.eugene-or.gov

Agenda Item Number: A
Staff Contact: Steve Nystrom
Contact Telephone Number: 541-682-8385

ISSUE STATEMENT

This work session is an opportunity for the City Council to discuss a memo from the City Attorney's office concerning cell tower regulations.

BACKGROUND

This item is a follow-up to the work session the council previously held to discuss cell towers. That work session focused on the City's regulations, federal telecommunications standards and regulations of other select cities. At the conclusion of that work session, the council asked whether there was anything more the City could do, particularly within residential areas. The City Attorney offered to discuss this matter with the City's telecommunications consultant in Washington D.C. Based on his feedback, the City Attorney's office provided additional research and prepared a memo discussing those findings. Planning staff and legal counsel will be available at the work session to discuss this memo further.

While Eugene's ordinance has generally achieved the primary goal of minimizing the construction of new towers on residential lands (none built to date), there has been more recent interest from a couple of cell providers to locate a few towers in residential areas. As staff understands it, the cell providers have established the majority of their cell tower networks. However, a few pockets of poor service remain. It is this circumstance that has prompted the council to discuss whether there is more the City can do to regulate new towers in residential areas (primarily the R-1, Low-Density Residential zone).

As was discussed at the previous work session, the Federal Telecommunications Act stipulates the extent to which a local government may regulate telecommunication facilities. One of the key provisions of this federal act states that local government regulations may not prohibit, or "have the effect of prohibiting," the provision of personal wireless services. The City was successful in prohibiting cell towers in all residential zones except R-1 when it first adopted its ordinance. Given that the R-1 zoning district comprises the majority of land in the City, it was not legally possible to prohibit new towers in this zone as well.

Given these circumstances, the City Attorney's memo attempts to identify other possible actions

the City could consider. These suggestions generally include measures requiring cell providers to provide further analysis and justification that a proposed tower is necessary in the R-1 zone, and that all reasonable design alternatives have been considered. The memo also discusses other efforts underway by staff to encourage the use of emerging technologies which could help reduce visual impacts to neighborhoods.

Staff would note that while there currently is no capacity to undertake a code amendment process at this time, the City has begun a process of identifying potential amendments such as this which can be prioritized by the council in the future, as staff resources become available.

COUNCIL OPTIONS

This matter is before the City Council as a discussion item. No action is required.

CITY MANAGER'S RECOMMENDATION

No recommendation is necessary as this is a discussion item.

SUGGESTED MOTION

None.

ATTACHMENTS

A. Memo from City Attorney

FOR MORE INFORMATION

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Eugene City Attorney's Office

Memorandum

Date: **October 21, 2015**

To: **Mayor and City Council**

From: **Anne C. Davies**

Subject: **Cell Tower Update**

In December of last year, staff provided council with a brief summary of the City's regulations related to siting cell towers. Staff outlined the limitations that federal law places on the City and what measures are embodied in the current Eugene Code that serve to protect residential neighborhoods from the impacts of cell towers. Councilor Taylor requested that staff outline measures that are not currently in the code that could be added to provide further protections. Interested citizens pointed to the City of Glendale in California for possible guidance.

As suggested in that December 8th work session, we contacted the City's consultant in Washington D.C. to inquire whether he was aware of any other local jurisdictions, nationwide, that had regulations that Eugene could adopt that would provide greater protections to residential neighborhoods. The consultant was not aware of any specific local governments that stood out, but commented that generally New York and California were viewed as the states with local governments that had the most protective regulations. We have also reviewed relevant code provisions from Palo Alto and Davis, California.

Summary of Eugene's existing regulations

Before addressing the possible changes that might be made to Eugene's code, it is worth summarizing briefly the measures that Eugene already has in place to limit impacts from cell towers in residential areas. The Eugene Code currently creates a preference for collocation. Collocation on existing buildings, structures and utilities is favored over citing new cell towers in the code because collocations generally require less restrictive processes and approval criteria. In general, new towers are not allowed if cell service can be accommodated by collocation on existing towers. Where a new tower is necessary, the applicant must demonstrate that the new tower has the ability to accommodate future collocated antenna in order to minimize the need for additional towers.

The Eugene Code also has a strong preference for siting new towers in commercial and industrial zones over residential zones. New towers are not permitted at all in R-2, R-3 and R-4 zones. New towers are permitted outright in E-1, E-2, I-2 and I-3 zones, and are allowed in the R-1 zone with a conditional use permit. New towers are currently not allowed within 2,000 feet

of an existing tower. Further restrictions, including height limits, required buffering and camouflage, are intended to limit the adverse visual effects of cell towers.

As explained by staff, federal regulations do create some road blocks to the City's attempts to impose significant restrictions on the siting of new cell towers. Most importantly, under federal law, local regulations cannot have the effect of prohibiting the provision of wireless service. The City's current code addresses this federal prohibition – both the site review and conditional use permit criteria require an applicant that is proposing a new tower to demonstrate that collocation is impractical and fails to meet the needs of the service area before a new tower can be added.

Summary of Glendale's provisions

The City of Glendale's code was mentioned as a potential good example to consider. In reviewing Glendale's recent code revisions, a few points stand out. Glendale sought to strengthen the application requirements and limit new towers as much as possible to those towers and the characteristics of towers that were required to fill a service gap. The following are some elements of Glendale's code that are not present in Eugene's code.

- 1) Stronger application requirements: In Glendale, an applicant proposing to site a new tower must identify the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with coverage gap that the proposed tower is meant to close. The application must describe how the proposal will close that service gap.
- 2) Least intrusive means: In Glendale, a proposed tower cannot be taller than is necessary to serve the gap. In other jurisdictions, an applicant must demonstrate that the proposed tower is necessary to fill a significant gap in coverage or capacity shortfall and is the "least intrusive means of doing so."
- 3) Maintenance and Monitoring Program: Glendale's monitoring program includes the ability to require maintenance of landscaping and other mitigation measures.
- 4) Alternative Designs: In Eugene, an applicant for a new tower must perform an alternative sites analysis to study alternative locations to ensure there are no other sites more suitable; *i.e.*, available sites with preferable zoning. In Glendale, the alternatives analysis does not only include alternative sites, it requires the applicant to demonstrate that it has considered alternative configurations (*i.e.*, system and tower designs) so that the proposed tower is the least intrusive possible.

Possible revisions to strengthen Eugene's wireless regulation

- 1) Towers in residential zones: New towers are allowed in the R-1, Low Density Residential zone under Eugene's code, although they are disfavored, as explained above. Davis, California prohibits new towers in residential zones. Given the amount of City land zoned R-1, if Eugene were to prohibit siting new towers in this zone, it would have to

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provide a variance process to allow new towers where necessary to fill a significant gap in service.

- 2) Application requirements: Although an absolute prohibition in residential areas is not possible, the application requirements and approval criteria could be amended to clearly require a demonstration of a significant service gap and how the proposed tower is needed to fill that gap. However, it should be noted that the few recent proposals submitted for residential areas did demonstrate a significant gap in service. Therefore, it's not clear that such an amendment would affect future proposals in residential areas.
- 3) Alternatives analysis: Eugene could add a clearer requirement that the applicant include an alternative configuration analysis.
- 4) Tower Height: In Eugene's code, the height of a tower is merely limited to the maximum height allowed in the particular zone. Both Davis and Glendale require the tower to be no taller than is necessary to fill the service gap.

Additional Measures

In addition to reviewing the telecommunication regulations of other cities, staff is currently exploring other emerging technologies which may help minimize the need for new towers in the future. "Small Cell" technologies is a newer strategy for accommodating ever increasing data demands. These facilities are much smaller in size and can be collocated on a variety of structures and utilities, with minimal visual impact. While small cell facilities don't completely replace the need for towers, they do help augment telecommunication services which can help minimize the need for future towers. Staff believes these new technologies offer a positive alternative to the typical antenna designs.

Conclusion

Federal regulations do limit to some degree the steps local governments can take in prohibiting cell towers. However, technologies continue to improve – many carriers now prefer smaller equipment (small cells) that do not completely replace the need for towers, but that do provide an alternative for filling certain gaps in coverage. It is arguable that Eugene's code is adequate to address those changes in technology, but there may be updates and revisions that could be made to strengthen and make the code more clear.