



MONROE PLANNING COMMISSION

SUBJECT:	<i>DISCUSSION - Proposed Code Amendments regarding Small Wireless Facilities</i>
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
4/22/2019	Community Development	Ben Swanson Shana Restall	Shana Restall	New Business # 3

Discussion: 04/22/2019

Public Hearing:

Attachments: 1. Proposed Draft Small Wireless Facilities Ordinance

REQUESTED ACTION: None, this is informational only. A public hearing on this topic will take place at a later date.

POLICY CONSIDERATIONS

The FCC adopted a declaratory ruling and order (FCC 18-133), which became effective on January 14, 2019, regarding municipal regulation of "small wireless facilities." The Order has two main parts:

1. A new set of regulations that governs shot clocks and other limited aspects of the rollout of small wireless facilities ("small cells"); and
2. A declaratory ruling that does not enact any new regulations, but is the FCC's interpretation of how the provisions of a previous FCC order that limit state or local regulations that "effectively prohibit" the provision of wireless services [Sections 253 and 332(c)(7) of the Communications Act] should be applied. The declaratory ruling portion of the order adopts the position that a local government need only "materially inhibit" a particular small wireless facility deployment in order for its action to constitute an "effective prohibition." The declaratory ruling also provides guidance on fees that local governments may charge, and on how they may regulate ancillary rollout issues, such as tower spacing, equipment design, and other aesthetic concerns.

The FCC Order essentially makes it easier for private companies to take local governments to court if they believe municipal policies are effectively prohibiting network investment. To comply with this order, the City is proposing a new code chapter to regulate small wireless facilities.

DESCRIPTION/BACKGROUND

The tremendous growth in personal wireless services has created an increased demand for new wireless antennas and equipment. It is expected that carriers will continue to roll out new facilities in Monroe to accommodate the rapidly growing need for increased capacity and speed. Wireless telecommunications facilities (WCF) are regulated by federal, state, and local laws. Federal law significantly limits the City's ability to regulate WCFs. Under federal law, a local agency's decisions cannot have the effect of prohibiting the provision of wireless service or unreasonably discriminating among wireless service providers. Also, under federal law, the City may not regulate the placement, construction, or modification of wireless communications facilities on the basis of the environmental effects of radio frequency (RF) emissions, so long as the facilities comply with

the Federal Communications Commission (FCC) regulations concerning such emissions. Despite federal limitations, cities historically have retained ability to regulate aesthetic issues related to telecommunications facilities, including factors such as height and property line setbacks. However, federal law developments continue to erode that ability.

The latest federal law governing WCFs was adopted in 2012 as part of the 2012 Middle Class Tax Relief and Job Creation Act. This federal legislation contained Section 6409, now referred to as the Spectrum Act, and codified at 47 U.S.C. § 1455. The Spectrum Act was intended to facilitate the telecommunication industry's rapid deployment of wireless infrastructure by requiring local governments to approve any application that seeks to modify an existing wireless telecommunication facility that does not substantially alter the existing facility.

As the Spectrum Act did not contain specific definitions, the implementation of this Section has been open to interpretation by each local government. Furthermore, while the Act states that a local government cannot deny and shall approve an eligible facility request, it provides no guidance as to the required process or time limits in which a local government has to act. As a result, the FCC promulgated rules and standards, which include necessary definitions, processing requirements, timelines, and remedies for applications that seek to modify an existing wireless telecommunication facility in accordance with the Spectrum Act. The FCC's procedural rules went into effect on April 9, 2015. However, these standards do not provide for small cell facilities.

With the evolution of wireless technology, providers are relying on a combination of both traditional, larger cell tower equipment that can carry signals and data over a greater geographic range and newer small wireless facility technology (4G and 5G service) to increase capacity. Small cell facilities contain radios and antennas, but unlike the larger cell facilities, they require a fiber optic backbone in order to transmit cellular phone and data signals. Typically, small cell facilities are attached to utility poles or light/traffic poles within public rights-of-way. To address small wireless facilities, the Federal Communications Commission (FCC) recently issued a declaratory ruling and third report and order (FCC 18-133) regarding municipal regulation of "small wireless facilities," which became effective on January 14, 2019. The FCC Order placed limitations on local governments to regulate size and location of small wireless facilities equipment.

The City's existing regulations, as well as those within the proposed Unified Development regulations (Title 22), address the traditional deployment of larger wireless facilities, which mainly include separate, standalone cell towers and other large facilities added to the tops of existing structures, such as buildings or utility poles. Based on the evolution of technology and the recent FCC Order, changes to the code are needed to define how the City regulates the deployment of small wireless facilities. To achieve compliance with the Order, staff has drafted a new code chapter to address small wireless facilities, and is bringing it forward to the Planning Commission for review and discussion.

FISCAL IMPACT

N/A

TIME CONSTRAINTS

The FCC Order became effective on January 14, 2019.