**Agenda Sheet for City Council Meeting of:**
04/13/2015

**Date Rec'd**  4/1/2015
**Clerk's File #**  ORD C35246
**Renews #**
**Cross Ref #**
**Project #**
**Bid #**
**Requisition #**

**Submitting Dept**  PLANNING & DEVELOPMENT
**Contact**  TPPALMQUIST@SPOKANE.CITY.ORG  625-6157
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**Agenda Item**  Emergency Ordinance
**Agenda Item**  0650 PLANNING DEPT. INTERIM ZONING ORDINANCE RE: WIRELESS

**Agenda Wording**
An interim zoning ordinance relating to Title 17C and wireless transmissions.

**Summary (Background)**
An Interim Zoning Ordinance Of The City Of Spokane, Washington, Relating To Collocation, Modification, Removal And Replacement Of Wireless Facilities; Adding A New Chapter To Title 17c Of The Spokane Municipal Code; Establishing Interim Development Regulations For Collocation, Modification, Removal And Replacement Of Wireless Transmission Facilities To Conform To Federal Law And Regulations; Establishing An Application Submittal And Approval Process; And Declaring An Emergency.

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**Approvals**
**Dept Head**  MEULER, LOUIS
**Division Director**  SIMMONS, SCOTT M.
**Finance**  SALSTROM, JOHN
**Legal**  WHALEY, HUNT
**For the Mayor**  SANDERS, THERESA

**Additional Approvals**
**Purchasing**

**Council Notifications**
**Study Session**
**Other**

**Distribution List**
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PASSED BY SPOKANE CITY COUNCIL ON 4/13/2015

City Clerk
ORDINANCE NO. C35246

An Interim Zoning Ordinance Of The City Of Spokane, Washington, Relating To Collocation, Modification, Removal And Replacement Of Wireless Facilities; Adding A New Chapter To Title 17c Of The Spokane Municipal Code; Establishing Interim Development Regulations For Collocation, Modification, Removal And Replacement Of Wireless Transmission Facilities To Conform To Federal Law And Regulations; Establishing An Application Submittal And Approval Process; And Declaring An Emergency.

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the “1996 Act”), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Municipal Code of the City establishing local requirements for the location, construction, and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012” (the “Spectrum Act”) (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter “Section 6409”) of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act, has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the Federal Communications Commission (the “FCC”), pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and
WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above described proceeding (the "Report and Order" or "Order") clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC's review processes under the National Environmental Policy Act of 1969 (("NEPA") and section 106 of the National Historic Preservation Act of 1966 ("NHPA"), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) by adding new Subpart CC § 1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station ("Eligible Facility Request Rules"); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60-day shot clock and tolling provisions, establishes a deemed approved remedy for applications not timely responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Report and Order provides that the Eligible Facility Request Rules will be effective 90 days following publication in the Federal Register; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to apply local development and zoning regulations consistent with Section 6409 and the Order; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order to ensure that the City's development regulations are applied
in a manner that is consistent with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest;

**WHEREAS**, because the Eligible Facility Request Rules become effective on April 8, 2015, there is not adequate time for the City to adopt these proposed development and zoning regulations according to its normal procedures for amending its land use regulations; and

**WHEREAS**, RCW 36.70A.390 authorizes the City to adopt an interim zoning ordinance without holding a public hearing on interim zoning ordinance as long as the City holds a public hearing on the interim zoning ordinance within sixty days after adoption of the interim zoning ordinance, whether or not the City Council has received a recommendation on the matter from the planning commission or department. An interim zoning ordinance adopted under this authority may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period, and may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal; and

**WHEREAS**, pursuant to WAC 197-11-880, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act; and

**WHEREAS**, the City Council adopts the foregoing as its findings of fact justifying its adoption of this Ordinance; and

**WHEREAS**, the City Council finds that the interim zoning regulations by this Ordinance are necessary for the immediate preservation of the public peace, health, or safety and for the immediate support of city government and its existing public institutions;

NOW, THEREFORE, the City Council of the City of Spokane, Washington, does ordain as follows:

**Section 1. Interim Zoning Ordinance Adopted Regarding Eligible Facilities Requests.**
Title 17C of the Spokane Municipal Code is hereby amended, on an interim basis, by the addition of a new chapter to be known and referred to as Chapter 17C.356, Eligible Facilities Modifications, and reading as follows:

**Chapter 17C.356 Eligible Facilities Modifications**

010. Purpose
020. Definitions
030. Application Review

**Section 17C.356.010 Purpose**
This Chapter implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), as interpreted by the Federal Communications Commission’s ("FCC" or "Commission") Acceleration of Broadband Deployment Report & Order, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower
or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

Section 17C.356.020 Definitions

For the purposes of this Chapter, the terms used have the following meanings:

a. **Base Station.** A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

   i. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

   ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).

   iii. Any structure other than a tower that, at the time the relevant application is filed with the department under this section, supports or houses equipment described in paragraphs (a)(i)-(a)(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

   The term does not include any structure that, at the time the relevant application is filed with the department under this section, does not support or house equipment described in (a)(i)-(ii) of this section.

b. **Collocation.** The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

c. **Eligible Facilities Request.** Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

   i. Collocation of new transmission equipment;

   ii. Removal of transmission equipment; or

   iii. Replacement of transmission equipment.

d. **Eligible support structure.** Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City under this section.
e. **Existing.** A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

f. **Site.** For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

g. **Substantial Change.** A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

i. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

ii. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

iii. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

iv. It entails any excavation or deployment outside the current site;

v. It would defeat the concealment elements of the eligible support structure; or

vi. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support
structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (g)(i)-(g)(iv) of this section.

vii. For purposes of this section, changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. 47 CFR § 1.40001(b)(7)(i)(A).

h. Transmission Equipment. Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

i. Tower. Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Section 17C.356.030 Application Review

a. Application. The department shall prepare and make publicly available an application form which shall be limited to the information necessary for the department to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

b. Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the department shall review such application to determine whether the application so qualifies.

c. Timeframe for Review. Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, the department shall approve the application unless it determines that the application is not covered by this Chapter.

d. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by the department and the applicant, or in cases where the department determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

i. To toll the timeframe for incompleteness, the department must provide written notice to the applicant within 30 days of receipt of the application,
specifically delineating all missing documents or information required in the application.

ii. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the department's notice of incompleteness.

iii. Following a supplemental submission, the department will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

e. Interaction with Section 332(c)(7). If the department determines that the applicant's request is not covered by Section 6409(a) as delineated under this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the department's decision that the application is not a covered request. To the extent such information is necessary, the department may request additional information from the applicant to evaluate the application under Section 332(c)(7), pursuant to the limitations applicable to other Section 332(c)(7) reviews.

f. Failure to Act. In the event the department fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

Section 2. Public Hearing on Interim Zoning Ordinance. Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing on this interim zoning ordinance within 60 days. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this interim zoning ordinance, and either justify its continued imposition or cancel the interim zoning ordinance.

Section 3. Termination of Interim Zoning Ordinance. The interim zoning measures adopted herein shall terminate on ______________ (180 days after adoption) and be of no further effect thereafter, unless extended in accordance with RCW 36.70A.390.

Section 4. Amendments to Land Use Code. While this interim zoning ordinance is in effect, the Plan Commission is directed to review and make recommendations to the City Council regarding the adoption of the matters set forth in this interim zoning ordinance on a permanent basis. Public notice and participation in accordance with the City's standard practices should be followed and the city shall include both the community and the industry in the review of the matters set forth herein. The Plan Commission shall return its final recommendations to the City Council within 150 days of the effective date of this Ordinance.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or
federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 6. Declaration of Emergency and Effective Date. This Ordinance, passed by a majority plus one of the whole membership of the City Council as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall be effective immediately upon its passage.

ADOPTED BY THE CITY COUNCIL ON April 13, 2015

Council President

Attest:

City Clerk

Mayor

(Returned after Mayoral Signature Deadline)

(Returned by Mayor 04. 28. 2019)

Approved as to form:

Assistant City Attorney

Date

April 28, 2015

Effective Date

April 13, 2015