

ORDINANCE NO. _____

AN ORDINANCE RELATING TO ELIGIBLE FACILITIES MODIFICATIONS OF WIRELESS COMMUNICATION FACILITIES; ADOPTING CHAPTER 17C.356 OF THE SPOKANE MUNICIPAL CODE ON A PERMANENT BASIS; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council previously adopted Ordinance No. C35246 on an emergency basis, relating to collocation, modification, removal and replacement of wireless communications facilities and adding a new chapter 17C.356 to Title 17C of the Spokane Municipal Code on an interim basis; and

WHEREAS, Ordinance No. C35246 and chapter 17C.356 SMC were adopted on an interim basis in order to bring the City’s wireless communication facilities regulations into compliance with Federal laws and regulations relating to eligible facilities request; and

WHEREAS, pursuant to its findings, conclusions, and recommendation, dated October ____, 2015 (the “Plan Commission Recommendation”), the Spokane Plan Commission unanimously recommended that the City Council adopt the regulations in Ordinance No. C35246 and chapter 17C.356 SMC on a permanent basis; and

WHEREAS, the City Council adopts (i) the recitals in Ordinance No. C35246 and (ii) the Plan Commission Recommendations as its findings of fact justifying its adoption of this Ordinance; and

WHEREAS, the City Council finds that this Ordinance is 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. Chapter 17C.356 SMC Adopted. Chapter 17C.356 of the Spokane Municipal Code, Eligible Facilities Modifications, is hereby amended on a permanent basis to read 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 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. 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 3. 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 _____

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date