



AGENDA MEMO - PLANNING

PLANNING COMMISSION MEETING DATE: DECEMBER 11, 2012

DEPARTMENT: PLANNING

ITEM DESCRIPTION: APPLICANT/OWNER: CITY OF LAS VEGAS

** STAFF RECOMMENDATION(S) **

CASE NUMBER	RECOMMENDATION	REQUIRED FOR APPROVAL
TXT-47390	Staff recommends APPROVAL.	n/a

** PROPOSED AMENDMENT(S) **

1. Title 19.12.070 is hereby amended by amending the Conditional Use Regulation 1 for the “Wireless Communication Facility, Non-Stealth Design (Qualifying for Conditional Use Approval)” use as follows:

1. The applicant must submit to the Department, for administrative review and approval, a site plan and an elevation drawing. The Director shall review the documents to determine if the proposed facility conforms to the conditions listed below for this use. If the Director, in his discretion:

a. Determines that the proposed facility is a collocation of new transmission equipment, a removal of transmission equipment or a replacement of transmission equipment that:

i. Does not increase the tower height by more than 10% or height of additional antenna array plus 20 feet, whichever is greater;

ii. Does not add more than four new equipment cabinets or one new shelter; and

iii. Does not contain a protrusion of more than 20 feet or the width of the tower, whichever is greater;

the application will be approved as if permitted by right.

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ba. Approves the proposed facility to proceed as a conditional use, the Director shall provide written notice of approval to the applicant, with a copy to the office of the City Council. Within 10 days after the notice is mailed or delivered, the applicant may proceed to apply for building permits, unless a member of the City Council files with the Director a written request for the Council to review the approval. If such a request to review is filed, the application must first be reviewed and approved by the Council.

cb. Determines that the proposed facility does not conform to the conditions listed below, a Special Use Permit will be required for the use. Any determination by the Director that a Special Use Permit will be required is not subject to appeal.

2. Title 19.12.070 is hereby amended by amending the Conditional Use Regulation 1 for the “Wireless Communication Facility, Stealth Design” use as follows:

1. The applicant must submit to the Department, for administrative review and approval, a site plan and an elevation drawing. The Director shall review the documents to determine if the proposed facility conforms to the conditions listed below for this use. If the Director, in his discretion:

a. Determines that the proposed facility is a collocation of new transmission equipment, a removal of transmission equipment or a replacement of transmission equipment that:

i. Does not increase the tower height by more than 10% or height of additional antenna array plus 20 feet, whichever is greater;

ii. Does not add more than four new equipment cabinets or one new shelter; and

iii. Does not contain a protrusion of more than 20 feet or the width of the tower, whichever is greater;

the application will be approved as if permitted by right.

ba. Approves the proposed facility to proceed as a conditional use, the Director shall provide written notice of approval to the applicant, with a copy to the office of the City Council. Within 10 days after the notice is mailed or delivered, the applicant may proceed to apply for building permits, unless a member of the City Council files with the Director a written request for the Council to review the approval. If such a request to review is filed, the application must first be reviewed and approved by the Council.

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- cb. Determines that the proposed facility does not conform to the conditions listed below, a Special Use Permit will be required for the use. Any determination by the Director that a Special Use Permit will be required is not subject to appeal.

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**** STAFF REPORT ****

PROJECT DESCRIPTION

Discussion and possible action to amend Title 19.12 regarding Wireless Communication Facilities to conform to the most recent changes to the Federal Telecommunications Act of 1996.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
09/20/01	The Planning Commission recommended adoption of a Text Amendment (TA-0032-00) regarding revising the zoning regulations that pertain to wireless communication facilities.
02/20/02	The City Council adopted Bill 2002-11 as Ordinance 5436 to revise the zoning regulations that pertain to wireless communication facilities.

The Communications Act of 1934 is the United States federal law (enacted as Public Law Number 416, Act of June 19, 1934, ch. 652, 48 Stat. 1064, by the 73rd Congress) signed by President Franklin D. Roosevelt and codified as Chapter 5 of Title 47 of the United States Code, 47 U.S.C. § 151 et seq. that governs interstate and foreign commerce in communication by wire and radio. This Act replaced the Federal Radio Commission with the Federal Communications Commission (FCC).

The Telecommunications Act of 1996 was the first significant overhaul of US telecommunications law in more than sixty years, amending the Communications Act of 1934. This Act, signed by President Bill Clinton, represented a major change in US telecommunication law, since it was the first time that the Internet was included in broadcasting and spectrum allotment.

Section 332 of the Communications Act of 1934, as amended, addresses mobile services and under Subsection (c) – Regulatory Treatment of Mobile Services includes language that addresses local zoning authority related to the placement, construction, and modification of personal wireless service facilities as follows:

(7) Preservation of Local Zoning Authority.

- (A) General Authority.** Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

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(B) Limitations.

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof:

 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

Section 6409 of the “Middle Class Tax Relief and Job Creation Act of 2012,” signed on February 22, 2012 by President Barack Obama, amends the Telecommunications Act of 1996 to add provisions regarding modifications to existing wireless facilities as follows:

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Sec. 6409. Wireless Facilities Deployment.

(a) Facility Modifications.

- (1) In General.** Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.
- (2) Eligible Facilities Request.** For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves
 - (A)** Collocation of new transmission equipment;
 - (B)** Removal of transmission equipment; or
 - (C)** Replacement of transmission equipment.

ANALYSIS

The city of Las Vegas’s current process for collocations and replacement of transmission equipment is to evaluate these administratively as a minor site plan review. Such an application may be approved or denied as follows:

- ***Denied by the Director for failure to meet minimum requirements.*** If the Planning Department denies the application for the minor site plan review then a denial letter is sent to the applicant. The applicant may at that time make an application for a Special Use Permit to be heard as a public hearing at the Planning Commission for action;
- ***Denied due to requested review by City Council.*** If the Department approves the application, the appropriate City Council Office is notified of the Department’s approval of the request. The Council Office then has ten days to request to review the approval. Such a request must be made in writing to the Department. If there is a written request by the Council Office to review the approval, the minor site plan review is denied and a letter stating so is sent to the applicant. The applicant may at that time make an application for a Special Use Permit to be heard as a public hearing at the Planning Commission for action; or
- ***Approved.*** If the Director approves the minor site development plan review and no review is requested by the Council Office, an approval letter is sent to the applicant and building permits may be sought.

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The denial of a minor site plan review by the Department or the written request to review the approval of the minor site plan review by the Council Office maybe a violation of Sec.6409, which states that local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Although the new provisions do not specifically define “substantially change the physical dimensions”, review of the “Shot Clock Rule” and the Historic Review sections of the NCA do provide guidance on what the courts and the FCC are likely to look for in a finding. Those being as follows:

- Increase in tower height by more than 10% or height of additional antenna array plus 20 feet, whichever is greater
- More than four new equipment cabinets or one new shelter
- Protrusion of more than 20 feet or width of the tower, whichever is greater

The proposed change to the Wireless Communication Facility, Non-Stealth Design (Qualifying for Conditional Use Approval) and Wireless Communication Facility, Stealth Design will provide for Director approval of modifications to existing facilities that meet the above criteria so that such applications are approved as if the use was permitted by right. Such approval would not be subject to a request for review by the City Council prior to approval of the minor site plan review.

FINDINGS

The proposed text amendment will achieve the following:

- Proactively bring the City’s regulations related to modifications to existing wireless communications facilities into line with Federal law and regulations by establishing criteria for what constitutes substantial changes to the physical dimensions; and
- Indicates that those modifications that are less than substantial changes are approved as if permitted by right.

NOTICES MAILED **NEWSPAPER ONLY**

APPROVALS 0

PROTESTS 0