

## Staff Report

**WIRELESS TELECOMMUNICATION FACILITY SITING REQUIREMENTS  
AND STANDARDS**

December 16, 2014

**BACKGROUND:**

The wireless telecommunications industry is dynamic, with ever-changing technologies. City staff works with telecommunications providers in a variety of capacities, including for the lease of City property or space on City water towers, for the coordination of City rights-of-way for utility use, and as a regulatory agency for permitting new facilities. **At this time there are two separate issues that may be of interest to Council regarding wireless facilities:**

- 1) The first arises directly from a request by a cell provider to place small cell antennas on City street light poles. This implicates the City's proprietary and custodial roles for use of the right-of-way and access to City facilities. Up until now, wireless providers have only sought approval to construct wireless towers on City property or to install antennas on City facilities (water towers). This is the first time the City has received a request to install wireless equipment within the City's right-of-way on City equipment (street light poles).
- 2) The second issue will affect the City's regulatory zoning role, with mandatory federal rules for permitting of collocation of existing wireless facilities. This will include requirements to approve expansion and replacement of equipment.

General oversight of this industry is through the federal government. The Federal Communications Commission (FCC) administers federal regulations of telecommunications infrastructure, including rule making for consistency with federal requirements. The principal law regarding regulation of personal wireless services is the Telecommunications Act of 1996, which among others things set forth the policy of the United States Government to promote the deployment of personal wireless services. To date, local authority regarding the siting of new wireless facilities has been preserved when a local government does not act as a barrier to providing wireless service consistent with the intent and provisions of the 1996 Telecommunications Act.

In 2012, Congress passed legislation known as the Middle Class Tax Relief and Job Creation Act. Section 6409(a) of this legislation mandates that local governments approve collocation of eligible wireless facilities when there is no substantial change in the facility. On October 17, 2014, the FCC adopted new rules and definitions regarding cellular infrastructure deployment related to Section 6409(a). **These rules pertain to the regulatory process for collocation of wireless equipment of towers and base stations.** The FCC has created rules preempting local governments from regulating certain aspects of cellular installations in support of the goal for rapid siting and buildout

of cellular infrastructure. Notably, failure of a local government to act in manner consistent with the FCC rules for Section 6409(a) results in a “Deemed Approved” status of an application after 60 days.

The new rules particularly affect commonly seen wireless towers, but are also now applicable to all types of antenna systems, including distributed antenna systems (DAS) and small-cell systems. These types of infrastructure involve the use of many small antennas that are mounted on utility poles or in/on buildings. Clusters of these antennas help offload traffic from the traditional larger cellular antennas, often in event venues (e.g., the Iowa State Center) or in large commercial areas (e.g., North Grand Mall). The effect of the new FCC rules is to apply the same federal mandates for larger cellular installations to these smaller antennas. **The rules are applicable to sites on both private property and within the right-of-way. It does not affect terms of lease that may have been agreed upon by affected parties.**

The FCC rules will become effective within 90 days of their publication in the Federal Register. As of this writing, publication has not occurred but is expected soon. Staff estimates a March 15<sup>th</sup> effective date of the FCC ruling. A listing of important determinations by the FCC included in these rules is attached.

### **Existing Ames Regulations**

The City’s current zoning standards have been in place since 2000 and have not been adjusted for federal Court decisions, FCC rules, or changes in industry practices. **Wireless facilities are allowed in all zoning districts.** The Zoning Code requires a Special Use Permit to site new cellular installations. The Special Use Permit process requires that applicants demonstrate (1) that the proposed location is necessary for the functioning of the applicant’s network, (2) that an effort to collocate has been undertaken and was unsuccessful for reasons other than being unable to agree on compensation, and (3) that the antenna height is the lowest needed to function effectively. Proposed sites must also meet a variety of safety and aesthetic requirements, such as height and setbacks. Please note that some of these provisions are outdated in the context of the requirements under federal law and are not always applicable with Special Use Permits.

The City’s standards and process for new facilities are unaffected by the FCC Section 6409(a) rules. **However, once approved, a wireless provider will have the right to alter the facility within the stated FCC parameters of height and width.** Additionally, Ames’ ordinance does not directly regulate collocation other than stating it is not subject to a Special Use Permit in most situations, and the ordinance does not correspond to recent definitions articulated by the FCC for base stations and wireless towers.

### **Right-Of-Way Antennas**

The City recently received a request to place small-cell antennas on City streetlight poles in the vicinity of North Grand Mall. Based on industry information and commentary, this will likely be a new technological tool of infill service by wireless providers for a variety of reasons related to technology, costs, and regulatory process.

The City's Zoning Code never contemplated this type of technology being implemented in the right-of-way. This makes it unclear if they are prohibited or if they can be permitted, and if permitted, what the process is for approval. Although the City's right of way ordinance specifically states that electronic communications are included as right-of-way users, the present language of Chapter 22A did not contemplate or address these types of installations. The Electric Department's policies regarding pole attachments are designed to address how utility cables attach to poles—not cellular antenna equipment. Public Works also does not have right-of-way encroachment policies for these types of facilities.

City staff has communicated to the requestor that more time is needed to establish policies and requirements for such installations. It is likely that portions of the Right-of-Way Code, the Zoning Code, and the Electric utility policies may need to be modified to accommodate this type of technology in an orderly manner. That need will emerge whether it is intentionally desired by the City or it comes through a public utility interpretation of right to use.

#### **NEXT STEPS:**

**No action is required of the City Council at the December 16th meeting.** City staff intends to further investigate the ramifications of the new FCC requirements. This process will involve a legal analysis and a review of the City's existing requirements to determine what provisions in existing City laws may need to be modified.

In addition, City staff will evaluate how small-cell systems might be accommodated within the City's processes. This evaluation may include communicating with other communities, utilities, and wireless providers to better understand the technology and the implications of placing infrastructure in the City's right-of-way.

**Once the new FCC regulations are published and the 90-day waiting period expires, any gaps in City policy may result in the creation of installations that are not desirable to the City Council. Therefore, City staff will work to address these issues as quickly as possible, and will return to the Council with needed changes within the next few months. The City Council should note that, due to timing issues, there may be a need to expedite the adoption of Code modifications by waiving second and/or third readings.**

In the event that the City Council does not find a strong interest in prioritizing either issue for further investigation, the FCC rules will become effective and staff will work within the current language of the Municipal Code to the extent that it applies. Staff will continue to become informed about wireless issues and proceed towards updating rules as time allows. The City Council should note, however, that inconsistencies between the Municipal Code and federal law may create confusion, and the misapplication of federal requirements could result in facilities being deemed approved without local requirements being met.

**In summary, what is clear to date is that, under the new FCC rules, an existing or approved wireless facility can be expanded regardless of local standards.**

**However, it is unsettled whether wireless providers have a right to locate facilities in the right-of-way without City consent regarding the type, design, location, or charge for use.**

**ATTACHMENT – Summary of FCC Rulemaking for Section 6409(a) of the Middle Class Tax Relief and Job Creation Act released on October 21, 2014.**

**6409(a) Local governments may not deny, and shall approve a request to modify an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station from its state in 2012.**

“Wireless Tower” – Structure built for the sole or primary purpose of supporting licensed or authorized antennas and equipment.

“Base Station” – Any structure or equipment that enables communication between equipment and the network. (*staff comment- include buildings, poles, etc.*)

“Substantial change” is defined as:

- An increase of height by more than 20 feet or 10% (whichever is greater) when the tower is located outside public right-of-way, or by more than 10 feet or 10% (whichever is greater) when the tower is located on the public right-of-way. (*staff comment- regardless of zoning standards for setbacks, height*)
  - Protruding from the tower edge by more than twenty feet if outside the public right-of-way or by more than six feet if in the public right-of-way.
  - Excavating
  - Defeating existing concealment elements
- **Local governments may only require applicants to provide documentation related to determining whether the facilities meet the FCC requirements.**
  - Local government can only require information stated on the application and determined to be incomplete upon the initial submittal.
  - Local governments may continue to enforce and condition approval upon compliance with building, electrical, and safety codes reasonably related to health and safety.
- **Local governments shall approve applications within 60 days of filing. Any application not acted upon within that time period shall be “deemed granted.”**
- Local governments may still exert property rights over installations. That is, where a cellular provider has asked to place cellular infrastructure on City property, then the City may place timing, design, and other constraints on the installation to its satisfaction.
- Small-cell and DAS systems attached to existing structures such as buildings and utility poles are considered “collocations” and are excluded from National Historic Preservation Act review.

- Temporary towers meeting certain size limits and in place for less than 60 days are excluded from the requirement to provide national and local environmental notice in advance of their erection.